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Security Council

Sixty-fourth year

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Thursday, 3 December 2009, 10 a.m.
New York

President:	Mr. Kafando	(Burkina Faso)
Members:	Austria	Mr. Mayr-Harting
	China	Mr. Liu Zhenmin
	Costa Rica	Mr. Urbina
	Croatia	Mr. Vilović
	France	Mr. Araud
	Japan	Mr. Okuda
	Libyan Arab Jamahiriya	Mr. Dabbashi
	Mexico	Mr. Heller
	Russian Federation	Mr. Churkin
	Turkey	Mr. Apakan
	Uganda	Mr. Rugunda
	United Kingdom of Great Britain and Northern Ireland	Mr. Parham
	United States of America	Ms. DiCarlo
	Viet Nam	Mr. Le Luong Minh

Agenda

International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991

International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January 1994 and 31 December 1994

Letter dated 12 November 2009 from the President of the International Criminal Tribunal for Rwanda addressed to the President of the Security Council (S/2009/587)

Letter dated 12 November 2009 from the President of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 addressed to the President of the Security Council (S/2009/589)

This record contains the text of speeches delivered in English and of the interpretation of speeches delivered in the other languages. The final text will be printed in the *Official Records of the Security Council*. Corrections should be submitted to the original languages only. They should be incorporated in a copy of the record and sent under the signature of a member of the delegation concerned to the Chief of the Verbatim Reporting Service, room U-506.

09-63003 (E)

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The meeting was called to order at 10.15 a.m.

Expression of thanks to the retiring President

The President (*spoke in French*): As this is the first meeting of the Council in the month of December, I should like to take this opportunity to pay tribute, on behalf of the Council, to His Excellency Mr. Thomas Mayr-Harting, Permanent Representative of Austria, for his service as President of the Security Council for the month of November 2009. I am sure I speak for all members of the Council in expressing deep appreciation to Ambassador Mayr-Harting for the great diplomatic skill with which he conducted the Council's business last month.

Adoption of the agenda

The agenda was adopted.

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The President (*spoke in French*): I should like to inform the Council that I have received letters from the representatives of Bosnia and Herzegovina, Kenya, Rwanda, Serbia and Sweden, in which they request to be invited to participate in the consideration of the item on the Council's agenda. In conformity with the usual practice, I propose, with the consent of the Council, to invite those representatives to participate in the consideration of the item without the right to vote, in accordance with the relevant provisions of the Charter and rule 37 of the Council's provisional rules of procedure.

There being no objection, it is so decided.

At the invitation of the President, the representatives of the aforementioned countries took the seats reserved for them at the side of the Council Chamber.

The President (*spoke in French*): In accordance with the understanding reached in the Council's prior consultations, I shall take it that the Security Council agrees to extend an invitation under rule 39 of its provisional rules of procedure to Judge Patrick Robinson, President of the International Tribunal for the Former Yugoslavia; Judge Dennis Byron, President of the International Criminal Tribunal for Rwanda; Mr. Serge Brammertz, Prosecutor of the International Tribunal for the Former Yugoslavia; and Mr. Hassan Bubacar Jallow, Prosecutor of the International Criminal Tribunal for Rwanda.

It is so decided.

The Security Council will now begin its consideration of the item on its agenda. The Council is meeting in accordance with the understanding reached in its prior consultations.

I wish to draw the attention of Council members to the following documents: S/2009/589, which contains the text of a letter dated 12 November 2009 from the President of the International Criminal Tribunal for the Former Yugoslavia addressed to the President of the Security Council; S/2009/587, which contains the text of a letter dated 12 November 2009 from the President of the International Criminal Tribunal for Rwanda addressed to the President of the Security Council; S/2009/394, which contains a note by the Secretary-General dated 31 July 2009, transmitting the sixteenth annual report of the International Tribunal for the Former Yugoslavia; and S/2009/396, which contains a note by the Secretary-General dated 31 July 2009, transmitting the fourteenth annual report of the International Criminal Tribunal for Rwanda.

At this meeting, the Security Council will hear briefings by the President of the International Tribunal

for the Former Yugoslavia, the President of the International Criminal Tribunal for Rwanda and the Prosecutors of those two Tribunals.

I now give the floor to Judge Patrick Robinson, President of the International Criminal Tribunal for the Former Yugoslavia.

Judge Robinson: It is an honour for me to appear before the Council in my capacity as President of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and to do so under the presidency of Burkina Faso. I congratulate Burkina Faso on its assumption of the presidency of the Security Council and thank the President for the attention he has given to matters pertaining to the Tribunal.

My remarks today will be brief, as the details of the measures the Tribunal has undertaken to complete its mandate are set out in my written biannual report (S/2009/589), which has been duly submitted to the Council.

Since my most recent presentation, the Tribunal has continued to focus its energies on completing its work as expeditiously as possible. Of the 161 accused indicted by the Tribunal, only a single accused remains in the pre-trial stage awaiting the commencement his trial, and that trial will start on 17 December. A total of 24 accused are presently on trial in nine cases, and another 13 have appeals pending. Five trials are expected to be completed during the course of 2010 and three in the first half of 2011, while the remaining case — that of Radovan Karadžić — is currently estimated to be completed in August or September 2012.

With the redeployment of resources to the Appeals Chamber, we anticipate that all appeals will be completed in 2013, except for the Karadžić appeal, which is estimated at this time to be finished in February 2014. This revised estimate for the Karadžić appeal results from the decision of the Trial Chamber to assign counsel following the refusal of the self-represented accused to attend the trial. The Trial Chamber has given the assigned counsel five months to prepare, and the trial will resume in March 2010.

The redeployment of resources from trials to appeals is part of the Tribunal's overall downsizing strategy, which has already commenced. While these are our currently anticipated dates for completion, all possible measures will be taken to speed up our proceedings and shorten these anticipated times. To ensure that all possible measures are being taken to expedite our proceedings, I have reconvened the Working Group on Speeding up Trials. The recommendations of that Group will be presented in my next completion strategy report.

At my last briefing, I reported that contempt proceedings were sapping the strength of the Tribunal and diverting us from our main objective — the fair and expeditious completion of our trials and appeals for persons charged with serious violations of international humanitarian law. I am happy to inform the Council that we have made progress on this front, rendering two contempt trial judgments and two contempt appeal judgments. We have also amended the rules of procedure and evidence to expedite contempt proceedings.

As can be seen, our efforts to implement the completion strategy are coning to fruition and the end of all trials is in sight. But one serious hurdle remains. I refer to the continued flight from justice of Ratko Mladić and Goran Hadžić. The failure to bring these two men to justice will tarnish the Security Council's historic contribution to peacebuilding in the former Yugoslavia. I also wish to stress, as I have done before, that their immediate arrest would obviate the need for a residual trial function. It is not too late to arrest and try these fugitives, and I hope that the Security Council and Member States will act decisively to achieve that goal.

The other major issue on which I request the Council's assistance today is staff retention. It is a matter that requires immediate attention. We are currently losing, on average, about one staff member per working day to more secure employment, often to other judicial institutions in The Hague, such as the International Criminal Court and the Special Tribunal for Lebanon. In a recent survey of 451 staff members, 57 per cent stated that they were actively seeking employment elsewhere. If we consider the results from one specific group of critical staff members — the legal support staff of the Office of the Prosecutor and the Chambers — 70 per cent were actively seeking employment elsewhere, 24 per cent stated that they felt exhausted by their current work load, and close to 50 per cent stated that they felt they have to work too fast. The reality of the situation is that there is a very real threat to the Tribunal's ability to conduct its work

as expeditiously and fairly as possible during the remaining years of its mandate.

I acknowledge the efforts made by the General Assembly to assist the Tribunal through resolution 63/256 of 24 December 2008, which authorizes the Tribunal to offer critical staff longer contracts, thereby alleviating some of their job insecurity. But more needs to be done, and there are two areas in which we could really use the help of the Security Council.

First, the International Civil Service Commission has recommended an end of service grant applicable to those staff separating from the organization upon completion of their contracts, provided they have served continuously for 10 years. Many of our staff have served over 10 years, and the end of service grant would provide them with a concrete incentive to remain until the completion of the Tribunal's work. Secondly, of great benefit to our staff would be their inclusion in the regime of continuing contracts. Continuing appointments will offer some of the stability that we sorely need, and I urge the Council to ensure that this new regime, if adopted, is made applicable to Tribunal staff.

However, the consultations I have had about these matters have left me somewhat uneasy. But it would be wrong — completely wrong — for a body like the United Nations to abandon the staff members of an institution that it had set up in a time of crisis to assist in the restoration of justice, peace and democracy in a troubled region, and which has, by any reasonable assessment, rendered invaluable and trailblazing service not only to that region, but to the international community as a whole. And it would be especially wrong for the United Nations to distance itself from the needs of the staff of such an institution, when it is in the final stages of its work, on formalistic grounds based on the so-called separateness and temporary character of that institution. That approach would result in the kind of injustice and discrimination that is antithetical not only to the lofty and noble purposes of the United Nations itself, but also to the inspiring objectives of that very institution. The staff of the Tribunal should not be treated as though they were staff of other nations. They are in fact staff of the United Nations and should not be separated from the benefits of United Nations staff by artificial administrative barriers. And so I appeal to the international community to exercise foresight by assisting the tribunal with measures to retain its staff and reduce the burden on the institution imposed by constant staff recruitment.

As the Council is no doubt aware, during my recent address to the General Assembly (A/64/PV.16), I proposed the establishment of a claims commission to compensate the victims of crimes committed during the wars in the former Yugoslavia. Since I became President of the Tribunal, I have had occasion to meet a multitude of victims' groups, and they have expressed anguish at the failure of the international community to provide any kind of compensation for their suffering. Indeed, they feel that they have been forgotten. Currently, there is no effective mechanism by which those victims can seek compensation for their injuries, despite the fact that their right to such compensation is firmly rooted in international law. And I refer to instruments such as the General Assembly's 1985 Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

Justice is not only about punishing perpetrators, it is also about restoring dignity to victims by ensuring that they have the concrete means to rebuild their lives. Clause 13 of the General Assembly's Declaration itself identifies sources of compensation, including the offender or national funds. However, in circumstances where the State is unable to compensate the victim, the Declaration proposes that other funds be established for this purpose. This was a matter that former Tribunal President Jorda brought to the attention of the Security Council in November 2000, recommending to the Council and to the Secretary-General that methods of compensating victims of crimes in the former Yugoslavia, notably a claims commission, be considered by the appropriate organs of the United Nations. I therefore implore the Council to take official steps to support the establishment of such a claims commission as a means of complementing the Tribunal's work.

I now wish to turn to another matter — that of the work being done by the Tribunal in preparation for the establishment of a residual mechanism. On 21 May 2009, the Secretary-General published his report on the administrative and budgetary aspects of the options for possible locations for the archives of the International Tribunal for the Former Yugoslavia and the

International Criminal Tribunal for Rwanda and the seat of the residual mechanism(s) for the Tribunals (S/2009/258). On 8 October 2009, the Secretary-General advised the Tribunal of the Security Council's endorsement of those recommendations and requested that the Tribunal comply with recommendation (m) in paragraph 259 and report in detail on the Tribunal's implementation of the tasks identified therein.

In my written report, I have addressed each of these tasks separately. But there is one task that I wanted to bring to the Council's attention here today. We have been asked to declassify, to the greatest extent possible, all the records of the Tribunal. This is a mammoth undertaking, which we have begun to tackle in the comprehensive and organized declassification project. This project will require significant resources to be properly implemented. To give the Council an idea of the work involved, the first case being examined is that of *Tadić*. All of the material has to be examined to identify the confidential hearings, witnesses, filings and exhibits. There are 1,304 pretrial transcript pages, 9,300 trial pages, 682 appeal pages, 65 confidential filings and 126 protected witnesses. All of those witnesses will need to be contacted to determine whether they oppose the lifting of confidential protection orders. Moreover, hundreds of exhibits will need to be examined for confidential information. While this is an onerous undertaking, when it is considered that the Tribunal has completed proceedings against 121 accused in 87 cases and still has 10 cases to complete against 25 accused, it will be appreciated that this task will greatly ease the judicial workload of the residual mechanism. The more material that is made public, the less need there will be for national jurisdictions to petition the residual mechanism for access to confidential material and for judges to issue decisions on those requests.

While primarily focusing on its core business, the Tribunal has also been diligently working towards the strengthening of competent national judicial systems in the former Yugoslavia in accordance with Security Council resolutions 1503 (2003) and 1534 (2004). I am proud to report that the Tribunal recently published a comprehensive report entitled "Supporting the Transition Process: Lessons Learned and Best Practices in Knowledge Transfer" evaluating the needs of the domestic judiciaries in the region. This report was prepared jointly with the Organization for Security and Cooperation in Europe and the United Nations Interregional Crime and Justice Research Institute and has been very well received in important quarters as groundbreaking.

Together with those institutions, we are now preparing an ambitious project to guarantee that the national justice systems in the region have the capacity to deal with their growing war crimes caseload as the Tribunal heads towards its final days. Generous funding from the European Commission is expected for this timely undertaking. I also urge the Security Council to support the national jurisdictions in the region as their capacity to continue our work is a key aspect of the Tribunal's legacy in the former Yugoslavia.

Inspired by broader United Nations efforts to coordinate rule of law activities, the Tribunal will convene a two-day conference at The Hague on 23 and 24 February 2010. The goals of the conference are to consult with stakeholders and generate interest and support for the Tribunal's legacy strategy in the former Yugoslavia, to foster contacts and partnerships between the Tribunal and different players, to share and gather information on what is being done by different actors in relation to capacity-building in the region, and to promote the coordination and consolidation of all of those efforts.

The conference will also provide an opportunity for countries of the former Yugoslavia and the broader international community to communicate to the Tribunal their ideas and expectations of its legacy. That dialogue will contribute to the work of the Tribunal in developing its comprehensive legacy strategy. It is anticipated that more than 200 persons will participate in the conference, with representatives from the Tribunal, the Security Council Working Group on the ad hoc Tribunals, the Rule of Law Unit, national jurisdictions in the former Yugoslavia, victims' groups, organs of the European Union and many others. The conference is being funded by voluntary pledges, and invitations have been issued to all members of the Security Council.

In closing, I would like to reiterate that we at the Tribunal remain dedicated to completing the work entrusted to us so that peace, justice and reconciliation may prevail in the region of the former Yugoslavia. I do emphasize, however, that a major obstacle to completing that task is the continuing flight from justice of Ratko Mladić and Goran Hadžić, and I urge

the Council to seek ways to facilitate their immediate arrest.

The staff retention issue also remains critical to the Tribunal's capacity to expedite its operations. Again, we urge the Council to actively work with other relevant organs of the United Nations for meaningful retention measures as a matter of urgency and in the two specific ways I have mentioned today.

The President (*spoke in French*): I thank Judge Patrick Robinson for his briefing.

I now give the floor to Judge Dennis Byron, President of the International Criminal Tribunal for Rwanda.

Judge Byron: I would like to join Judge Patrick Robinson in expressing congratulations to you, Sir, on your assumption of the presidency of the Security Council for December, the last month of your country's membership in the Council. I wish you all the best for a successful tour of duty.

On 8 November 1994, the Security Council adopted resolution 955 (1994) and created an international tribunal to bring justice to the hundreds of thousands of Rwandan victims of genocide, war crimes and crimes against humanity. Today, 15 years later, I am pleased to inform the Council of the remarkable progress in the conduct of trials and judgement deliveries. But yet, significant work remains ahead before we can safely say that we have achieved our mandate and tried the principal perpetrators of the horrendous atrocities committed in Rwanda in 1994.

Since my last briefing in June, our Tribunal has rendered five first-instance judgements in single-accused cases, including a sentencing judgement following a guilty plea, and one appeals judgement. We have mastered the difficult task of commencing 10 new trials in the course of this year. In two of the cases, judgements have already been delivered; in three other cases, including a retrial, the entire evidence has been heard. In the remaining five cases, the defence phase will be completed before the end of this year or in the first half of 2010. The spillovers are mainly linked to fair trial concerns; defence counsel have needed more time to prepare their cases initially or more time to respond to the prosecution case.

The four ongoing multi-accused cases continue to pose the greatest challenge to the Tribunal, even where the evidence phase has been completed, as is the case in three of the trials involving 17 accused. The judgement drafting in those cases is expected to be completed in the course of next year, but progress is continuously challenged by parallel assignments of the judges and their legal staff to support other cases. While the judges sit full days over months in the courtroom to hear sometimes several additional trials, the scheduling of complex deliberations in the multi-accused cases is difficult and risks delays.

The fourth trial, *Karemera et al.*, continues to be delayed largely due to the illness of one of the defendants, requiring the Chamber to sit in half-day sessions only and to allow additional breaks in the trial schedule to accommodate medical needs. Despite those unavoidable impediments, we aim to complete the evidence phase in this case by the end of 2010.

The *Karemera* trial will be one of three ongoing cases in which judgement drafting will continue in the first half of 2011. The other two, *Ngirabatware* and *Nzabonimana*, are likely to spill into 2011 because the presiding judges are also members of the bench in the largest multi-accused case, the "*Butare*" trial. Priority must be given to judgement delivery in that case, which is expected for autumn 2010, even though this may delay the delivery of judgements in the other cases by some months.

In September, the plenary of judges adopted an amendment of the rules of procedure and evidence, allowing for the hearing of special depositions for the preservation of evidence against the remaining fugitives. That amendment aims at preventing the loss of evidence 15 years after the crimes were committed. The hearings, which are planned for the last quarter of next year, will focus on those of the three currently top-ranked accused who still remain at large.

As Council members can see, we have another busy year ahead, in which we need to provide increased output with declining resources. During the first half of 2010, we will focus on the completion of the evidence phase in all ongoing trials, with the exception of *Karemera*. In addition, we expect judgement delivery in four single-accused cases. During the second half of 2010, additional judgements in six cases involving 17 accused are to be rendered. In short, and provided we manage to retain the current level of legal support staff, we expect judgement delivery in trials against 21 accused in 2010. Furthermore, two new trials will commence, and we

aim, to the extent possible, for completion of their evidence phases during the coming year.

As I mentioned before, most of the 7 permanent and 11 ad litem judges currently serving at the Tribunal are involved in several cases in parallel. That situation will continue for the majority of next year. Judges are also needed to handle the cases of the two newly arrested accused, for possible requests for referral of cases to national jurisdictions under rule 11 bis, and for the special deposition hearings. I therefore ask the Council to extend the exception granted in resolution 1855 (2008), allowing for a maximum number of 12 ad litem judges to serve at the Tribunal at any one time, until the end of 2010.

I explained in June our concerns about the inequality in the terms and conditions of service between permanent and ad litem judges, concerning in particular the entitlement to pensions. Resolution 1878 (2009) took note of those concerns. I have had bilateral discussions with representatives of numerous Member States and the Secretariat on the matter, and they have expressed their sympathy for our endeavour to achieve a review of the terms and conditions of service in the interest of equity and the completion strategy. I am confident that the matter can be addressed by the General Assembly in early 2010.

Let me now turn to another fundamentally important issue, namely, State cooperation. The arrests in August and October of two of the fugitives, Grégoire Ndahimana and Idelphonse Nizeyimana, are very positive developments, and I would like to thank the respective national authorities in the Democratic Republic of Congo and Uganda for their important contribution to the fight against impunity. The transfer of Idelphonse Nizeyimana to Arusha only one day after his arrest in Uganda should serve as an example of efficient and swift cooperation between the Tribunal and Member States.

I am sure that Council members agree with me that 11 fugitives remaining at large today, more than 15 years after the genocide, are 11 too many. The list includes three top suspects, Félicien Kabuga, Protais Mpiranya and Augustin Bizimana. The time for their arrest is long overdue. They have benefited from impunity for far too long.

I would like to recall once again that it was the Council that determined, when setting up the Tribunal in 1994, that genocide, war crimes and crimes against humanity constitute a threat to international peace and security. That proposition was as true then as it is today. It is in the interest of the entire international community that the remaining fugitives be arrested and tried fairly. This Tribunal has not accomplished its mandate, if top-level fugitives continue to benefit from impunity, while victims wait for justice. I strongly call upon all Member States, and in particular those where there is significant evidence that fugitives are hiding in their territory, such as Kenya, to fully cooperate with the Tribunal.

The fugitives need to be arrested and transferred to Arusha now, before the Tribunal closes down. The trial functions of a residual mechanism are indispensable as long as fugitives remain at large. But we should all aim at leaving behind a heritage of trials that is as limited as possible, so that the mechanism can focus on truly residual work, such as the management of the Tribunal's archives, continuous witness protection and the supervision of sentences.

Recent developments at the Tribunal highlight the essential need for cooperation by Member States in another area. During the last weeks, two accused were acquitted, Hormisdas Nsengimana at the trial level and Protais Zigiranyirazo by the Appeals Chamber. For them and two others who were previously acquitted and who all live currently in safe houses in Arusha, the Registrar of the Tribunal is seeking countries for relocation. It is of fundamental importance and in the interests of fair justice that Member States be ready and prepared to accept the relocation of acquitted persons to their territory.

The third essential area of cooperation by Member States and a cornerstone of the completion strategy is the referral of cases to national jurisdictions under rule 11 bis. The Prosecutor, assisted by the Registrar, continues his efforts to ensure that more than the two cases that were transferred to France in 2007 can be handled by national courts now or in the near future. The focus of the efforts continues to be technical support for Rwanda in order to ensure that the State in which the crimes were committed can take over cases. But other Member States with jurisdiction are also urged to consider accepting some of the remaining cases of fugitives from the Tribunal for trial on the national level. In this regard, we are pleased to note legislative changes that have been introduced or are under way in several countries, providing jurisdiction over genocide, crimes against humanity

and war crimes committed, for instance, in Rwanda in 1994. Such laudable legislative changes not only support the Tribunal in its efforts to transfer cases to national jurisdictions, but underscore the willingness of those countries to effectively fight impunity for the most serious international crimes, irrespective of where or by whom or against whom they were committed.

Our efforts are channelled towards the completion of our remaining trial and appeals work. At the same time, we have been following up on the recommendations for the transitional period, contained in the report of the Secretary-General on the residual mechanism (S/2009/258). An overview of the measures taken so far is contained in our completion strategy report (see S/2009/587), and we will continue, to the best of our abilities, to provide the Council with comprehensive information to support its decision-making process.

The discussions in the Advisory Committee on Administrative and Budgetary Questions and the Fifth Committee on the Tribunal's budget submission for the 2010-2011 biennium are ongoing. Since our submission, many developments have occurred, for example the two new arrests, which will lead to certain adaptations in the initial request. Any change in the judicial calendar at this stage, when contract extensions are tightly linked to trial schedules, affects all who are involved in the trial work, from legal officers and trial attorneys to court reporters and interpreters. I ask for the understanding of all Member States for that increased need for flexibility.

Over the past six months, the Governments of the members of the Security Council have continued to provide support for our work through the adoption of resolution 1878 (2009) in July, the arrest of fugitives, voluntary contributions to the Trust Fund, and intense preparatory work for the residual mechanism. I would like to assure the Council that all of us at the Tribunal in Arusha greatly appreciate that support. The Secretariat, in particular the Office of Legal Affairs, has facilitated our cooperation with the Council and with the Governments of its members and has assisted in communicating our mutual needs and concerns. We extend our appreciation and thanks to all their staff.

It remains a fact that the ad hoc Tribunals have laid the ground for the rapid and astonishing development of international criminal justice during the past decade and a half. Without them, there would be no International Criminal Court. Without their jurisprudence, support and policy-setting examples, convictions of Rwandan génocidaires in Canada, the Netherlands and Belgium and the ongoing investigations against alleged perpetrators of genocide, war crimes and crimes against humanity worldwide would have been less likely, to say the least.

We all know that the days of our Tribunal are numbered. It is essential that we reflect on the lessons we can learn from the past 15 years and on how best to address the fight against impunity for international crimes in the future. If we succeed together in establishing a more effective rule of international law, the suffering of countless victims will not have been completely in vain.

At the same time, we know that the last part of the Tribunal's lifespan is not an easy one. We must remain committed and strive to improve our work, while our experienced and hard-working staff faces the imminent end of their contracts and the need to secure their professional careers.

The future of the international fight against impunity will rest mainly on the shoulders of national jurisdictions and the International Criminal Court. However, today, I ask for the Council's continuous support so that our Tribunal, which was at the starting point of that amazing development of international criminal justice, can complete its mandate expeditiously and with all due respect for the highest standards of fair trials.

The President (*spoke in French*): I thank Judge Byron for his briefing.

I now give the floor to Mr. Serge Brammertz, Prosecutor of the International Criminal Tribunal for the Former Yugoslavia.

Mr. Brammertz: This morning, I will address the Council on the key elements related to the completion of our mandate, which has moved into a significant new phase. More specifically, I will speak briefly on the status of our trials and appeals; the cooperation between the Office of the Prosecutor and States; our capacity-building efforts throughout the region; and, lastly, our plans to downsize my Office in the coming years.

At present, the Office of the Prosecutor is working on eight trials involving 17 accused. The last trial to start at the International Tribunal for the Former

Yugoslavia, except the trials of the fugitives, is scheduled to commence on 17 December this year.

On 27 October 2009, the trial in the case against Radovan Karadžić started, with the prosecution presenting its opening statement. The prosecution is prepared and remains ready to proceed with its first witness. As with other cases, my Office has balanced various competing requirements associated with such large cases. It will present a case that is representative of the crimes committed, yet streamlined and manageable.

The Karadžić indictment charges crimes arising from the ethnic cleansing of Bosnia and Herzegovina, the shelling of Sarajevo, the hostage-taking of United Nations peacekeepers and the attack on the United Nations safe area of Srebrenica. Because of Karadžić's senior position and the magnitude and gravity of the crimes charged, his trial is important not only to the victims of the crimes, but also to the international community as a whole.

At the start of the trial against Karadžić, I met with representatives of victims associations. I was encouraged to hear that they continue to support the efforts of the Office of the Prosecutor. For the victims, the crimes remain in the present and are not historical events of the past. As we proceed with the evidence of what happened, we are reminded of the fact that Mladić is still to be arrested. As an indicted accused, Mladić's place is before the Trial Chamber, with Karadžić.

The arrests of Ratko Mladić and the other remaining fugitive, Goran Hadžić, remain one of my Office's foremost priorities. Prosecution lawyers are currently reviewing the Mladić indictment and I expect to file a proposed amended indictment shortly.

There are currently five cases on appeal. During the next biennium, appeals cases are expected to double. Plans have been implemented to transfer posts and necessary resources to the Appeals Section of my Office in order to address that increased workload. As a result, my Office is fully prepared to meet the work as appeals hearings increase in number and continue into 2013.

The cooperation of States remains a key condition to the successful accomplishment of our mandate and to meeting the completion strategy goals. In recent weeks, I met with the authorities of Bosnia and Herzegovina, Croatia and Serbia at the political, judicial and operational levels to assess their level of cooperation with my Office. The purpose of the missions was also to further our relations with national prosecution services.

Since the last briefing to the Council, Serbia's cooperation with my Office has continued to progress. Prosecution requests to access documents and archives are being dealt with more expeditiously and effectively. It is important that the authorities continue to provide that level of assistance, which will remain crucial during current and future trial and appeals work.

The most critical aspect of Serbia's cooperation is the need to apprehend the fugitives. My Office recognizes the professionalism and commitment of operational services tasked with the tracking of fugitives. I am in regular and direct contact with officials in charge of these operations. These services are now working more efficiently and in a coordinated manner. Moreover, a variety of operational activities, including search operations, are currently being conducted. Serbia must maintain these efforts with the clear objective of apprehending the fugitives.

With regard to Croatia, we continue to work on a regular basis with the Ministry of Justice and the Office of the State Prosecutor, which are assisting in responding to the prosecution's requests. The central issue of concern remains the still unresolved request to locate and obtain key military documents related to Operation Storm of 1995. I welcome, however, the personal initiative of the Prime Minister of Croatia to establish in October an inter-agency task force aimed at locating these documents, particularly as there had been virtually no activity in the administrative investigation since my last briefing to the Security Council in June (see S/PV.6134). A report of the task force received this week is helpful in revealing gaps in the administrative investigation and in identifying further investigative steps to be taken. These and all other available investigative steps must be urgently undertaken in order to complete a comprehensive and credible investigation into locating the missing documents.

Bosnia and Herzegovina continues to respond to all prosecution requests. My Office interacts on a regular basis with the Special Department for War Crimes of the State Court. I am, however, concerned about the possible departure of international personnel

and support staff from the Special Department for War Crimes. Despite repeated requests from judicial institutions in Bosnia and Herzegovina, the mandates of international staff ending in December have not been renewed due to the lack of political will. If this matter is not urgently addressed, ongoing trial proceedings and war crimes investigations could be jeopardized. There will also be serious repercussions for the Tribunal's work, since they also act on investigative material transferred by my Office. Immediate action is needed.

My Office will soon complete the hand-over of investigative files to prosecutors in Bosnia and Herzegovina, Croatia and Serbia. In addition to the rule 11 bis cases transferred on the basis of judicial decisions, in total my Office has handed over 17 investigative files involving 43 suspects to authorities throughout the former Yugoslavia.

A fundamental aspect of the Tribunal's completion strategy is the strengthening of the judicial systems in the States of the former Yugoslavia. As a concrete example, I would like to mention the successful project for national prosecutors and young professionals from the former Yugoslavia. This project was set up jointly by my Office and the European Commission. In June, three prosecutors from the region — one from Bosnia and Herzegovina, one from Croatia and one from Serbia — began working as liaison prosecutors within my Office.

Domestic prosecutors have to continue the work that my Office had originally undertaken, for instance, by working on cases and material that have been transferred to the region. As I have indicated in the past, national prosecution services and judiciaries continue to face significant legal obstacles and challenges with regard to the prosecution of war crimes. The prohibition on extraditing nationals to other States threatens successful investigations and prosecutions, as do legal barriers to the transfer of war crimes cases between States. State prosecutors are encouraged to maintain an open dialogue and to find ways to cooperate in the most efficient and professional manner possible.

Downsizing mechanisms have been agreed and communicated to staff and will be implemented starting 1 January 2010. Initial staff reductions in the Office of the Prosecutor will start immediately in the new year and will increase throughout the year, reflecting the completion of trials. My Office's budget proposal for 2010-2011, which was discussed with the Advisory Committee on Administrative and Budgetary Questions, proposed a series of cuts in staff numbers as trials are completed. Specifically, we have called for a nearly 40 per cent reduction in the Office of the Prosecutor as trials end over the course of the next year, including abolishing one of the two director posts within my Office. Over the next two years, there will be a reduction of 60 per cent of staff positions within the Office of the Prosecutor. In the meantime, prosecution trial and appeals teams will continue to work at maximum capacity to ensure that trials proceed expeditiously and in accordance with the completion strategy.

I thank members for their attention. On behalf of everyone in our Office, I would like to express my appreciation for the Council's ongoing support of our work.

The President (*spoke in French*): I thank Mr. Brammertz for his briefing.

I now give the floor to Mr. Hassan Bubacar Jallow, Prosecutor of the International Criminal Tribunal for Rwanda.

Mr. Jallow: The past six months have been a period of sustained and intense work at the International Criminal Tribunal for Rwanda (ICTR) in furtherance of the completion of trial and other activities. During this period, the Office of the Prosecutor has been able to prepare and present the trials of six new cases and to complete the prosecution phase of the trials in all but one of these cases. A guilty plea was also successfully concluded in the Michel Bagaragaza case and received the endorsement of the Trial Chamber.

Over the same period, the Office of the Prosecutor has had to prepare and file two final appeals and three interlocutory appeals. It has also had to respond to four final appeals and eight interlocutory appeals filed by the defence. This is in addition to the preparation of two motions for additional evidence and responses to nine such motions in the Appeals Chamber. Three final appeals were also argued, with judgement delivered in one of them and pending in the other two.

As the President has indicated, two new arrests of indictees were made. Grégoire Ndahimana was arrested

in the Democratic Republic of the Congo in a joint operation of the ICTR, the Democratic Republic of the Congo and the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC) in August. Idelphonse Nizeyimana, a leading fugitive earmarked for trial at the ICTR, was arrested in Uganda in October 2009. I would like to record our appreciation to the Governments of the Democratic Republic of the Congo and Uganda, as well as to MONUC, for their cooperation, which made these arrests possible.

With such continued tripartite cooperation among MONUC, the Democratic Republic of the Congo and the ICTR, we are optimistic that several fugitives still sheltering in the Democratic Republic of the Congo can be apprehended and brought to justice and that their arrests will contribute significantly to the restoration of peace and stability in the Great Lakes region.

However, I regret to report that there has been no progress in the matter of cooperation by Kenya in relation to the case of Félicien Kabuga. Repeated requests to the Government of Kenya for details of Kabuga's reported departure from that country have gone unanswered for the past 12 months. This situation should not be allowed to continue. This Council has, by its resolution 1503 (2003), called on Kenya to cooperate with the ICTR to ensure the arrest and transfer of Kabuga to the Tribunal for trial. Kenya should be required to comply with its legal obligations under the United Nations Charter, and international law generally, to give full cooperation to the ICTR and to comply with these requests. In the event that this situation continues in the weeks ahead, my Office will seriously consider the option of initiating the process for the formal referral of Kenya to the Security Council under article 28 of the statute of the Tribunal for non-cooperation with the ICTR.

The fifth Colloquium of Prosecutors of International Criminal Tribunals, which I referred to in my last briefing to the Council (see S/PV.6134), was successfully hosted by the Office of the Prosecutor of the Tribunal in November in Kigali, Rwanda. It gave the prosecutors of all the international tribunals who participated in it an opportunity to share experiences as well as lessons learned and to consult further on ways in which the process of fighting impunity through the enforcement of international criminal law can be further enhanced. The Colloquium adopted the Kigali Declaration on international criminal justice, which will be circulated to all Member States. In the declaration, inter alia, the Prosecutors called upon all States to take the necessary measures to vest their national and regional judicial systems with the capacity and jurisdiction to prosecute or extradite those suspected of international crimes and to provide full cooperation to all international criminal tribunals, in particular with regard to the enforcement of orders and requests for assistance.

In the months that lie ahead, my Office will focus its efforts on several fronts. Trial readiness preparations are already in progress in respect of the two recent arrestees, namely, Grégoire Ndahimana and Idelphonse Nizeyimana, whose cases are set for trial in 2010. My Office will also be attending to the conclusion of eight partly heard cases, some of which commenced in the past six months. We anticipate that, by the end of 2010, the trials of all current detainees, save the two new arrestees, will have been concluded.

We are also optimistic that the intensification of tracking efforts and greater State cooperation may yield positive results with regard to the apprehension and transfer to the ICTR of the remaining 11 fugitives. Three of those fugitives have been earmarked for trial at the ICTR or by the residual mechanism, and the remaining eight for referral to national jurisdictions. The prospects for referral to a national jurisdiction following any further arrests will largely determine the conclusion of the Tribunal's trial phase under the completion strategy. At this stage, it would be helpful, and indeed necessary, for the Security Council to continue to remind Member States of their legal obligations of cooperation in respect of fugitives.

In the absence of other States willing to accept cases from the ICTR for trial, our efforts with regard to the referral of cases to national jurisdictions continue to focus on Rwanda. As I reported the last time we met with the Security Council, Rwanda has undertaken considerable law reform in the justice sector that, if combined with appropriate capacity building measures, should be sufficient to enable my Office to renew its requests for referral of cases to that country.

Since our last report to the Council, the Tribunal has provided training to the staff of the new Rwanda witness protection service. Some donors have agreed to provide the necessary resources to make the service and the video link system operational before the end of

2009. Those measures should take care of the concerns related to witness protection and provide an alternative for the taking of evidence from those witnesses who are reluctant to travel to Rwanda to testify. Once those capacity-building measures are implemented, I propose to file new applications, early in 2010, for the referral of the cases of eight of the 11 fugitives to Rwanda for trial.

Cooperation between the ICTR and national prosecuting and national judicial authorities has intensified significantly since the holding of a joint forum with such authorities in November 2008 at the ICTR. The authorities of several such States are now actively engaged in the investigation and prosecution of international crimes, in particular those connected with the Rwandan genocide of 1994. Those authorities require, and have benefited from, significant assistance, in particular evidence from the ICTR, in that process. In the past 12 months, my Office has received requests for assistance from 13 countries with regard to 44 targets under investigation by national authorities. We have serviced those requests by, among other things, providing information from, and access to, our evidentiary database and the records of other organs of the Tribunal.

The sharing of information and evidence with national authorities will continue to be a major element of our work, not only now but beyond completion and even under a residual mechanism. Combating international crimes requires an effective partnership between the Tribunals and national authorities. Access by such authorities to the vast databases of the Tribunals is indispensable for such a partnership. We shall continue to attend to requests for cooperation from States with all due diligence. In that respect, we welcome and commend Canadian authorities for the recently concluded successful prosecution in Canada of the first case of genocide in relation to the events in Rwanda. We also continue to support authorities in Belgium and other countries in respect of ongoing prosecutions.

In our last report to the Council, I indicated that serious concerns for potential loss of evidence over time, in particular in the cases of top-level fugitives, had prompted my Office to propose amendments of the ICTR Rules of Procedure and Evidence to provide for a procedure for the preservation of evidence in cases where fugitives continue to be at large. As the President has indicated, the Judges of the ICTR, meeting in plenary session on 1 October 2009, adopted the necessary amendment to the Rules. Accordingly, my Office proposes to request such proceedings, by the second quarter of 2010, in the cases of the three top-level fugitives, namely, Félicien Kabuga, Augustin Bizimana, former Minister of Defence, and Protais Mpiranya, former Commander of the Presidential Guard of Rwanda. The objective of the proceedings will be to enable the statements of prosecution witnesses, and even of defence witnesses, to be recorded before a judge, with a view to their use in a subsequent trial in the event that the witnesses are no longer available for good cause. In that way, we hope that the interests of justice will not be defeated by the loss of evidence in the wake of prolonged evasion of justice by fugitives.

While we focus on servicing pending trials, the preparation of new cases for trial, filing new requests for referral to Rwanda and instituting proceedings for the preservation of evidence in respect of the three top-level fugitives, we are also attending to, and will intensify preparations for, the closure of the Tribunal, with particular attention to archival and residual issues. Within my Office, the archiving of the records of the Investigations Division and of the trials that have been concluded is already proceeding in earnest.

All those activities will continue to require significant resources, as well as the cooperation of Member States, if the ICTR is to meet the goals of the completion strategy. In that respect, we look forward to the sympathetic consideration by Member States of the ICTR budget proposals for the 2010-2011 biennium. The cooperation of Member States and the support of the Security Council, the other organs of the United Nations and the Organization's Secretariat have been indispensable in the Tribunal's achievements. I would like to convey our appreciation for all such support. We look forward to that same cooperation at this crucial stage in the implementation of our completion strategy.

The President (*spoke in French*): I thank Prosecutor Jallow for his briefing.

I shall now give the floor to the members of the Council, beginning with Ambassador Mayr-Harting, Permanent Representative of Austria, in his capacity as Chairman of the Informal Working Group on International Tribunals.

Mr. Mayr-Harting (Austria) (*spoke in French*): At the outset, allow me to thank you, Mr. President, for

the kind words you addressed to me and my delegation. I should like in turn to congratulate you and your delegation on Burkina Faso's assumption of the presidency for the month of December. This month is always very difficult and busy, and we are therefore very happy that it will be in your very experienced hands. Of course, you will have our full support and cooperation throughout the month.

(*spoke in English*)

I would also like to thank the Presidents and Prosecutors of the International Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) for their briefings.

In my statement today, I will first address some issues about the completion strategies of the Tribunals. Secondly, as you have already said, Mr. President, in my capacity as Chairman of the Security Council's Informal Working Group on International Tribunals, I would like to give an update on the Group's activities.

Austria reiterates its strong support for the strengthening of international criminal justice, including through the International Criminal Court (ICC), ad hoc or mixed tribunals and truth commissions. We highly commend the work of the ICTY and ICTR, which carry out a crucial task in fighting impunity and bringing to justice those responsible for the most serious crimes. Austria fully supports the efforts of the Tribunals to complete their work at the earliest possible date. However, the most recent reports of the Tribunals (see S/2009/587 and S/2009/589) indicate that their work is not likely to be finished until 2013, or even 2014.

While the reported delays remain of concern — and we urge the Tribunals to take all possible measures to complete their work expeditiously — at the same time we have to accept the reality that the dates set forth in resolutions 1503 (2003) and 1534 (2004) will not be met. We believe that we have reached a point where the Security Council will need to adapt to the changed circumstances and extend the mandates of the judges beyond 2010 in order to allow the Tribunals to plan their trials and appeals for the coming years.

The arrest of the remaining 13 fugitives, including Ratko Mladić, Goran Hadžić and Félicien Kabuga, remains a top priority for the completion of the Tribunals' work. We call on all States concerned to fully cooperate with the Tribunals. With regard to the ICTY, we welcome the most recent report by the Prosecutor (see S/2009/589, annex II), in which he states that he is satisfied with the current level of efforts undertaken by the Serbian authorities in their cooperation with the Tribunal. We also welcome the continued efforts by the Croatian Government under Prime Minister Jadranka Kosor, in particular the recent establishment of the new task force. The task force concept has already been crucial to the ultimately successful efforts of Croatia and the international community to arrest General Gotovina and transfer him to The Hague. We welcome the most recent positive developments that the Chief Prosecutor has been able to report to us today. We are confident that the new task force and the intensive interaction and dialogue between the task force and the Office of the Prosecutor will help to rapidly address all outstanding issues on missing documents.

With regard to the ICTR, we welcome the cooperation of the Democratic Republic of the Congo and Uganda that led to the arrest of two fugitives during the reporting period.

As we already stressed this past June, the referral of cases to competent national jurisdictions is an essential part of the completion strategy. We therefore continue to encourage Rwanda's efforts to improve its judicial system and witness protection system and hope that those efforts will enable the Prosecutor to reapply for a referral of cases in early 2010.

I would now like to give a brief update on the activities of the informal Working Group on international tribunals since my most recent briefing in June (see S/PV.6134). The Group, which to date has held 21 meetings, has continued to meet on a regular basis to take forward the discussions on the establishment of the residual mechanism or mechanisms. Another meeting of the Working Group with the Presidents and Prosecutors of both Tribunals will take place this afternoon. The members of the Group has also met informally with the President of the Special Court for Sierra Leone and with representatives of the Netherlands, Rwanda and Serbia in order to continue the dialogue with affected countries and host countries of the Tribunals.

In mid-July, the Working Group started discussing the Secretary-General's report (S/2009/258) on the administrative and budgetary aspects of the

options for possible locations for the archives and the seat of the residual mechanism or mechanisms for the Tribunals. The report provides valuable information about the eight potential residual functions identified by the Tribunals, discusses the potential structure and organization of the future residual mechanism or mechanisms and provides tentative estimates for staffing and costs. It further analyzes 14 potential locations for the Tribunals' archives and the residual mechanism or mechanisms, which include 13 United Nations offices and the International Criminal Court. The report concludes with 13 recommendations addressed to the Security Council and the Tribunals.

On behalf of the members of the Working Group, I would like to take this opportunity to highly commend the Office of Legal Affairs for the preparation of this report, which provides an excellent basis for the Group's deliberations. In September, the Working Group already reached agreement on recommendations (l) and (m), which are addressed to the Tribunals and are contained in paragraph 259 of the report. By a letter dated 28 September 2009 (S/2009/496), the President of the Security Council confirmed that Council members welcomed those recommendations and requested that the Secretary-General write to the Presidents of the Tribunals to ask that they ensure that the listed tasks are carried out as part of their completion strategies and that they report to the Security Council on their progress in implementing these tasks as part of their regular reporting, which we have heard today.

In June and July, the Working Group also considered various requests by the Presidents of the Tribunals related to the completion strategies, including the extension of the judges' mandates, the appointment of additional ad litem judges and the redeployment of judges to the Appeals Chamber. On 7 July, following negotiations and the agreement reached in the Working Group, the Security Council adopted resolutions 1877 (2009) and 1878 (2009). By letters dated 29 September, 15 October and 6 November 2009, respectively, the Tribunal Presidents made some new requests for the extension of some of the judges' mandates. In this regard, the Working Group is currently discussing two technical draft resolutions, which are expected to be adopted in mid-December.

On 8 October 2009, in order to increase transparency, raise awareness and provide an opportunity to hear the views of expert speakers and the broader United Nations membership on the various key issues related to the establishment of the residual mechanism or mechanisms, the Permanent Mission of Austria organized an Arria formula meeting on residual issues of the ICTY and the ICTR open to all Member States. Invited speakers included the Presidents of ICTY and ICTR, the Assistant Secretary-General for Legal Affairs, as well as representatives of the International Committee of the Red Cross and the International Center for Transitional Justice. We are grateful to the many Member States who participated actively and for the interest they showed in the meeting. The meeting provided the Working Group with very useful input for its deliberations.

Next week, the Working Group will start its first reading of the new draft resolution on the establishment of an international residual mechanism for criminal tribunals, prepared by the Chair with the help of the Office of Legal Affairs and based on the recommendations in the Secretary-General's report. The negotiations on the resolution are expected to continue in the spring.

In conclusion, I would like to thank once again the Presidents and Prosecutors of the ICTY and ICTR for their briefings. I would also like to express our gratitude to all the members of the Working Group for their very active and constructive participation in our discussions.

The President (*spoke in French*): I thank Ambassador Mayr-Harting, as well as Presidents Byron and Robinson, for their kind words addressed to the presidency of Burkina Faso.

Mr. Vilović (Croatia): At the outset, allow me to extend my congratulations to you, Mr. President, and to your delegation for your assumption of the presidency of the Council for the month of December, which, as we all know, is not the easiest month. Let me assure you of the full cooperation of my delegation during your presidency. At the same time, I would like to thank Ambassador Mayr-Harting and his team for the excellent manner in which they chaired the Council in the month of November. I would also like to thank Ambassador Mayr-Harting for chairing the informal Working Group on international tribunals and the excellent deliberations he chaired in that respect. Allow me to also welcome Presidents Robinson and Byron, as well as Prosecutors Brammertz and Jallow, and thank

them for their contributions and their presence here today.

Since their establishment, the two Tribunals have had a profound impact on efforts to deny impunity for the serious crimes committed in the former Yugoslavia and Rwanda, which continue to haunt our collective conscience. We recognize their vital contribution to the fight against impunity, advancing the rule of law and paving the way for reconciliation and cooperation by providing justice and dignity to victims and by individualizing criminal accountability.

Croatia has been a staunch supporter of the mandate of the International Criminal Tribunal for the Former Yugoslavia (ICTY) since its inception. The Croatian Government is firm in its commitment to continue to provide its full and unequivocal support to the Tribunal's efforts to combat impunity by prosecuting those responsible for serious violations of international humanitarian law.

We look forward to the day when the Tribunals can close their doors and transition to a residual mechanism, but not before ensuring that those most responsible for the crimes committed face justice. We thus welcome the recent arrest of the high-level fugitives indicted by the ICTR and hope to see the early beginning of their respective trials.

We regret that the arrest of the remaining high-level fugitives still remains elusive for the ICTY, thus further complicating the projected completion strategy. Croatia firmly believes that the mandate of the ICTY cannot be declared complete without bringing to justice the two remaining fugitives: Ratko Mladic and Goran Hadzic, who have been indicted for the most atrocious crimes committed in Bosnia and Herzegovina and in Croatia, namely the massacres committed in Srebrenica and in Vukovar.

More than a year ago another high-profile fugitive was arrested — Radovan Karadzic. We regret to note that his case will enter the trial phase only next spring, despite the fact that more than a dozen years have passed since his indictment. We also regret to see the dismay that the trial delays have caused to victims and their families. We hope that a protracted trial will not repeat the scenario of the trial of Milosevic, whose death made impossible a sentence which would have clearly outlined the role of those most responsible for the atrocities committed in the former Yugoslavia. Locating and arresting high-profile fugitives must remain a priority, not just for the Tribunals but for the international community as well.

In facilitating the arrest of all suspects in the past, in a framework of close cooperation with the Office of the Prosecutor and in accordance with our constitutional law on cooperation with the ICTY, Croatia has established a solid and credible record of support for the fulfilment of the Tribunal's goals. In the same spirit, Croatia is now continuing its full cooperation with respect to the request regarding missing documents sought by the Office of the Prosecutor. This is particularly important in the light of the hearing scheduled for 16 December by the Trial Chamber, which is to assess this issue.

In that regard, let me express our appreciation for the Prosecutor's assessment indicating Croatia's determination to further pursue this path of full cooperation and the leadership shown by Prime Minister Jadranka Kosor in that respect.

While the administrative investigation has shown that the Republic of Croatia is not in possession of the requested documents, the establishment of a task force and the new findings mentioned by the Prosecutor clearly indicate the Prime Minister's determination not only in complying with the court's orders, but also going further in our pursuit to retrieve or fully disclose the fate of documents which are in the exclusive ownership of the Republic of Croatia. In pursuing this path, we look forward to developing even further our cooperation with the Office of the Prosecutor in this final push, with the aim of securing our common goal of serving justice, peace, reconciliation and, based on these values, a future of prosperity in South-East Europe.

Croatia appreciates the considerable efforts that the Tribunals are investing in expediting the timely completion of their work. We take note of the anticipated dates for the closure of the Tribunals, which will slip well into the next decade. While we share the concerns expressed about lengthy trials, we also recognize the need to be realistic. The early closure of the two Tribunals is a legitimate objective, but not at the expense of fair trial guarantees.

As a non-permanent member of the Security Council, for the past two years Croatia has been participating in the extensive deliberations of the Informal Working Group on International Tribunals, currently under the chairmanship of Austria, whose

efforts we greatly appreciate. Setting up a residual mechanism that will continue the essential functions of the Tribunals after their closure remains a pressing need. The credibility of such a mechanism will inevitably reflect on the legacy that the Tribunals are leaving behind. This is an issue of most direct relevance for the countries under the Tribunals' jurisdiction. My country hopes that the Council will be able to define timely solutions along the lines recently presented by the Chairman of the Informal Working Group and adopt the necessary decisions. We hope that our participation has helped the process by factoring in the experience of a county directly affected by a Tribunal's jurisdiction.

The President (*spoke in French*): I thank the representative of Croatia for the kind words he addressed to me.

Mr. Churkin (Russian Federation) (*spoke in Russian*): I wish you, Sir, and your delegation success as you assume the presidency of the Council for the month of December. We also thank Ambassador Mayr-Harting and the delegation of Austria for their leadership last month.

We thank the Presidents and Prosecutors of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) for the information they provided on the situation in the Tribunals and their efforts to implement their completion strategies. Today's briefings give us a further opportunity to assess the results that the Tribunals have achieved, to formulate practical recommendations and to chart a course for the future.

Completing the work of ad hoc bodies of international criminal justice poses a complex and multifaceted challenge. It requires not only significant efforts by the courts themselves but also the assistance and oversight of the Security Council. Even bearing ongoing trials in mind, we can say with considerable certainty that, in both international law and political terms, the Tribunals are close to completing their missions.

A significant number of individuals who committed crimes have fallen into the hands of international criminal justice. The majority of them have been convicted and are serving their sentences. As instruments of post-conflict settlement, the Tribunals have played their role in restoring peace and political equilibrium in their respective regions. We also note the Tribunals' contribution to the development of national judicial systems and investigative organs; this will enable national bodies to work independently without prompting. There are now operationally independent judicial systems in Rwanda and the States that came into being in the territory of the former Yugoslavia. We see no basis for rejecting the sovereign right of those States to dispense national criminal justice, especially since those countries have stated their willingness to independently prosecute accused identified by the ICTY and the ICTR.

We therefore believe that it is time for the Security Council to adopt specific decisions on implementing measures set out in the completion strategies conveyed to the Tribunals six years ago in resolution 1503 (2003) and reaffirmed in resolution 1534 (2004). In that context, we must also address the issue of the deadline for extending the terms of the current judges. It is our view that in 2010 the Tribunals will maintain their current intensive pace of work. Trials — no matter how complex — must not drag on interminably.

For the successful completion of the Tribunals' mandates and in order to speed up the trials, it will be particularly to ensure effective cooperation by States, first and foremost States in the regions covered by the Tribunals. Here, we note the positive assessment of the level of cooperation by the Serbian authorities set out in the report of Prosecutor Brammertz (S/2009/589, annex II). We call on other countries to respond promptly and appropriately to requests by the Prosecutors of the Tribunals.

I note in conclusion the interesting and diverse proposals for carrying out residual functions of the Tribunals when they have completed their work. We expect the Security Council to come forward next year with optimal and mutually acceptable scenarios for establishing a residual mechanism for the Tribunals.

The President (*spoke in French*): I thank the representative of the Russian Federation for the kind words he addressed to me.

Mr. Parham (United Kingdom): I offer you warm congratulations, Sir, on your assumption of the presidency of the Council for this month. We very much look forward to working with you, and we assure you of our full support. We are very grateful also to Ambassador Mayr-Harting and the Austrian delegation

for their distinguished presidency of the Council last month. We are also very grateful to Presidents Byron and Robinson and Prosecutors Jallow and Brammertz for their latest reports and for their briefings this morning.

My Government also associates itself with the statement to be made later by the representative of Sweden as President of the European Union.

The United Kingdom welcomes the further progress that has been made in implementing the completion strategies of the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the Former Yugoslavia (ICTY) over the past six months. We acknowledge the measures taken by the two Tribunals to expedite proceedings, but we remain concerned that the latest reports indicate further slippage in the timelines for final completion. We recognize that some delays have been caused by factors outside the Tribunals' control, such as the illness of accused or counsel and, in the case of ICTR, by the welcome arrests of two fugitives. Nevertheless, we urge both Tribunals to take all necessary steps to keep the trial and appeal schedules on track. In that context we would welcome confirmation from President Robinson and President Byron that all current Trial Chambers are sitting full time to hear their cases.

We have noted the comments of both Presidents concerning the terms and conditions of staff and judges of the Tribunals, and those points will need to be addressed by the appropriate organs of the General Assembly. While the primary responsibility for ensuring timely completion lies with the Tribunals themselves, the Security Council must also play its part. It particular, it is our responsibility to take the necessary decisions to extend the mandates of those judges who need to be retained by the Tribunals to complete the remaining cases.

It is clear from the forecasts by the Presidents that even with expedited procedures, trial work will not be complete until 2011-2012 and appeal work not until mid-2013 — provided that additional resources are reallocated to the Appeals Chamber. While we regret the delay, we must accept the reality of those timelines and act accordingly. If the Security Council fails to extend judicial mandates until the last minute, there is a risk that the uncertainty created will cause more judges to leave before completion of their cases, thus generating greater disruption in the Tribunals' ongoing work.

As my Government has made clear on many occasions, full cooperation by all States is vital to ensure the completion of the mandates of the ICTY and ICTR. In particular, the remaining fugitives — two in the case of ICTY and 11 in the case of ICTR — must be located and surrendered to The Hague and Arusha. We reiterate that the mandate of the Tribunals will not be complete until those individuals have been brought to justice.

My Government appreciates the detailed assessments of cooperation by States in the region of the former Yugoslavia provided by the Prosecutor of the ICTY, Mr. Serge Brammertz. In relation to Croatia, we agree that the establishment of the Task Force is a positive step, and we welcome it. Nevertheless, my Government is disappointed that the Croatian Government has not sufficiently demonstrated to the Prosecutor that they have pursued all avenues of investigation and that key requested documents relating to the Gotovina case remain to be found or accounted for. We welcome the further developments reported by the Prosecutor this morning and urge Croatia to achieve full cooperation by taking the necessary further measures to complete a comprehensive and credible investigation towards finding or accounting for missing documents.

We are very pleased by Serbia's sustained improvement over the last six months, as reported by the Prosecutor, which demonstrates its increased commitment to cooperation with ICTY. We support the Prosecutor's view that it is essential that Serbia maintain the current level of cooperation in tracing the fugitives Ratko Mladić and Goran Hadžić.

In the case of ICTR, we welcome the intensification of the Prosecutor's efforts to track fugitives, which has led to the recent arrest and surrender to the Tribunal of two fugitive indictees. We also welcome the cooperation provided by Uganda and the Democratic Republic of the Congo in facilitating those arrests. The transfer of Idelphonse Nizeyimana to Arusha only one day after his arrest in Uganda is an example, as President Byron said, of swift and efficient cooperation by a Member State with the Tribunal. Nevertheless, it is deeply unsatisfactory that so many ICTR fugitives remain at large, and we call on all

United Nations Member States to cooperate in this issue.

In particular, we regret that Kenya has not responded to the Prosecutor's requests for information. We urge the Kenyan Government to step up its level of cooperation with the Tribunal and to share any information that it may hold on the current whereabouts of Félicien Kabuga. If I remember correctly, when the Council debated these issues last June, the representative of Kenya said that his Government was certain that Kabuga had left Kenya. That, of course, meant that the Kenyan Government knew that Kabuga had been in Kenya and begged the question what evidence they had of his presence in Kenya and his subsequent departure, and what they could do with that evidence to help track Kabuga's current location.

My Government notes the Prosecutor's intention to refer this matter formally to this Council, and in any case we would welcome more detailed assessment of State cooperation in the ICTR Prosecutor's future reports. The Security Council needs to be kept fully informed of developments in tracking the fugitives to enable us to consider all options.

Finally, I would like to look forward to the establishment of a residual mechanism to carry out the essential functions of the Tribunals that need to be continued following completion of their trial and appeal work, such as witness protection, review of judgements, sentence enforcement, management of archives and, if necessary, trial of fugitives. We consider that the Tribunals should do everything possible to refer all appropriate cases to national jurisdictions to reduce the trial burden of the residual mechanism. In that context we warmly welcome the effort being undertaken by Rwanda to enhance the capacity of their judicial system to facilitate referrals, efforts which my Government is supporting.

Establishment of that mechanism will be vital for the legacy of the Tribunals. We welcome the report of the Secretary-General issued earlier this year, which provides useful guidance to the Security Council on how these issues can be managed (S/2009/258). We also recognize and appreciate the preparatory work undertaken by both Tribunals in making ready for the establishment of the mechanism, including implementation of recommendations in the Secretary-General's report.

My Government will continue to play an active role in the ongoing discussions under the able chairmanship of Austria. We hope we will be able to reach agreement in the first half of next year on a resolution on the establishment of the residual mechanism. Even though final completion of the Tribunals' work is still some way off, it is important that we take timely decisions, particularly on location and core functions of the mechanism, to allow for orderly planning of the completion and post-completion phase of the Tribunals' activity.

The President (*spoke in French*): I thank the representative of the United Kingdom for the kind words he addressed to me.

Mr. Le Luong Minh (Viet Nam): On behalf of the delegation of Viet Nam, I warmly congratulate you, Sir, and your delegation on assuming the presidency of the Security Council for this month. In discharging your important task, you and your delegation can rely on the fullest cooperation of my delegation. I would also like to convey to Ambassador Thomas Mayr-Harting and the delegation of Austria our sincere appreciation of their effective leadership of the work of the Council in November.

I thank the Presidents and Prosecutors of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) for their briefings and their comprehensive reports on the work of the two Tribunals.

My delegation notes with appreciation the commitment of the Tribunals to accomplishing their completion strategies as soon as possible. While making efforts to complete a large amount of trial work, both Tribunals have also undertaken measures, as recommended by the Secretary-General, [1] in preparations for the transition to the residual mechanism.

In adopting resolution 1534 (2004), the Security Council expressed its determination to review the implementation of the Tribunals' completion strategies and to ensure that the timeframes set out in the completion strategies and endorsed by resolution 1503 (2003) would be met. At present, both Tribunals estimate their completion date of all appeals to be between the end of 2012 and mid-2013. That will require that the Security Council consider proper adjustments to facilitate the Tribunals' efforts to

complete their mandates without further slippage. We urge the Tribunals to take all necessary measures to meet the requirements of the completion strategies, and we call on all Member States to extend full cooperation with a view to helping the Tribunals with an early completion of their work.

We support all efforts aimed at strengthening competent national judicial systems to facilitate the transfer of cases involving intermediate- and lower-rank indictees, including fugitives, from the Tribunals to national jurisdictions.

Before concluding, I wish to express our high appreciation of the work of the Council's Informal Working Group on international tribunals concerning a possible residual mechanism to replace the ICTY and the ICTR in their post-completion period. The Working Group has been able to reach numerous common understandings providing the basic elements of an initial draft resolution on such a residual mechanism. Viet Nam encourages the Working Group to continue its deliberations, in close collaboration with the Tribunals, to finalize the draft resolution.

The President (*spoke in French*): I thank the representative of Viet Nam for his kind words addressed to me.

Mr. Araud (France) (*spoke in French*): At the outset, I would like to congratulate our Austrian colleague for the way in which he presided over the Council in November. I would also like to convey to you, Mr. President, our best wishes for your presidency for the month of December. We know that you will carry out these functions with the necessary firmness and effectiveness. I would like to add that the fact that your presidency is being conducted in French will only lend more clarity, logic and elegance to our work. I see that my statement has earned unanimous approval around the table.

I would like to thank the Presidents and Prosecutors of the International Criminal Tribunal for Rwanda (ICTR) and the International Tribunal for the Former Yugoslavia (ICTY) for their presentation of their reports. France endorses the statement to be made by the representative of Sweden on behalf of the European Union.

The briefings we have heard confirm that the deadlines set in the completion strategies for the Tribunals will be missed and that their work will continue beyond 2010. The Security Council must consider the consequences of this. The first thing to do is to give the Tribunals the means to complete their trials and appeals as soon as possible, in full compliance with the rules of fairness and justice. The mandate of the appeal judges must be immediately extended to 31 December 2011. The Tribunals must be able to exceed the authorized tenure for ad litem judges by one more year. We hope that, in these decisions, the Security Council will make clear its resolve to ensure that the Tribunals will be able to bring their work to a successful conclusion. Nevertheless, the delay in implementing the Tribunals' completion strategies remains of concern, and we ask the Tribunals to redouble their efforts to step up the effectiveness and pace of the work of the Trial and Appeal Chambers.

The work of the Prosecutors is particularly essential to tracking fugitives, whose arrest and transfer to the Tribunals is a priority. The fact that some accused remain at large is one of the major areas of uncertainty hindering the completion strategies. The mission of the Tribunals will not be accomplished so long as these individuals have not been arrested and tried.

In this regard, the Serbian authorities' arrest of Mr. Karadžić was a major step forward for the ICTY. We now await the arrests of Mr. Mladić and Mr. Hadžić. Serbia must continue on the path that its Government has recently taken. Full cooperation with the ICTY, be it in tracking fugitives or bringing them to justice, is an essential element of the stabilization and association strategy being pursued by the European Union for all countries in the region of the former Yugoslavia. We trust in the efforts of Croatia to resolve pending issues.

With respect to the ICTR, we commend the arrest and transfer of two fugitives to Arusha in the period under review. Eleven of the accused, including three of highest rank, remain at large. We call on all concerned States to provide Prosecutor Jallow with the necessary cooperation. We reiterate our request to Kenya to fulfil its obligations with respect to the arrest and transfer of Félicien Kabuga to the ICTR. We welcome Rwanda's efforts to overcome legal obstacles to the referral of cases to its jurisdiction, allowing it to try lower-rank fugitives. Ensuring the protection of witnesses remains critical.

I would recall that, if the problem of fugitives is not resolved quickly, it will have to be addressed in the context of the legacy of the Tribunals. Indeed, it would be unacceptable for the Tribunals' closure to entail impunity for those who are at large. This function will fall to the residual mechanism carrying out essential functions once the Tribunals are closed. The Security Council Informal Working Group on international tribunals has continued to work on this subject under the effective leadership of Austria, for which we are grateful.

An examination of the Secretary-General's report on this subject (S/2009/258) will allow the Group to consider the topic more deeply. The report contains a number of recommendations addressed to the Tribunals on immediate preparations for the transition to the residual mechanism. My country, eager to ensure that the Council adopts a timely decision on preserving the integrity of the Tribunals' legacy, is participating in that work. The solution must meet the criteria of simplicity, modesty and economy. It must avoid all duplication and, indeed, should make use of services provided by other institutions.

The President (*spoke in French*): I thank the representative of France for his kinds words addressed to me.

Mr. Okuda (Japan): At the outset, let me join previous speakers in congratulating you, Sir, on your assumption of the presidency of the Security Council for December. We are grateful to Ambassador Mayr-Harting and his team for the excellent leadership with which they successfully conducted the work of the Council in November. I would also like to thank the Presidents and Prosecutors of the Tribunals for briefing us on the latest developments in their completion strategies.

The contribution of the International Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) to the development of international criminal law cannot be overstated. In this regard, we would like to extend our appreciation to all the judges, prosecutors and staff for their devoted efforts to ensure the fair and expeditious operation of these important judicial bodies.

Japan expected and strongly urged the Tribunals to complete all judicial proceedings in 2010, in accordance with Security Council resolution 1503 (2003). We recall that, in their most recent reports (S/2009/394 and S/2009/396), the two Tribunals have affirmed that this was unrealistic on the basis of their latest estimates. Japan notes with gratitude the efforts made by the two Tribunals to minimize the delays in the proceedings, while ensuring fair trials. We strongly encourage the Tribunals to continue their efforts to complete their work as expeditiously as possible.

Regarding particular requests by the Tribunals, such as for the extension of their judges' terms, we have been informed that these measures are necessary in order to accomplish the completion strategy in an expeditious and cost-effective manner. Based on this understanding, Japan is prepared to work on the necessary measures to be taken by the Council. We also note the remarks on the necessity of staff retention to the work of the Tribunals.

It is clear that the arrest of the remaining fugitives is of paramount importance to the success of the Tribunals. We commend the authorities of the Democratic Republic of the Congo and Uganda for the arrest and transfer to the ICTR of Grégoire Ndahimana and Idelphonse Nizeyimana. On the other hand, it is regrettable that two suspects indicted by the ICTY, Ratko Mladić and Goran Hadžić, and 11 others under indictment by the ICTR, including Félicien Kabuga, have yet to be apprehended. We encourage the relevant States to cooperate in order to secure the arrest of all indictees as early as possible.

The referral of cases is an important part of the completion strategy. In this regard, we appreciate the efforts made by the Rwandan authorities to facilitate the referral of cases, including the establishment of a witness protection service within the Rwandan judiciary.

With regard to the ICTY, cooperation from States of the former Yugoslavia in such areas as access to archives, documents and witnesses is also vital. We take positive note of the initiative taken by Croatia to accelerate cooperation in response to the request of the Prosecutor in relation to the missing documents. We also take positive note of the improved cooperation of Serbia and the adequate response of Bosnia and Herzegovina to the requests of the Prosecutor. We encourage them to continue their efforts in this regard.

Given that the ICTY and the ICTR were established by Security Council resolutions adopted under Chapter VII of the Charter in an exceptional manner, they are facing challenges unique to ad hoc

tribunals, including the need for a residual mechanism after completion, which was not fully anticipated at the time of their establishment. Japan attaches great importance to the rule of law, and considers that impunity for the most serious crimes must not be condoned and that the individuals involved must be brought to justice in accordance with international standards. The residual mechanism should serve to this end, while efforts must be made to maintain as cost-effective a system as possible.

We welcome the report of the Secretary-General on the administrative and budgetary aspects of residual mechanisms dated 21 May 2009 (S/2009/258), submitted pursuant to the Council's presidential statement of 19 December 2008 (S/PRST/2008/47). The report provides a valuable basis for our discussion in the Informal Working Group on international tribunals under the chairmanship of Austria. We thank both Tribunals for including in their reports preparatory measures taken for the transitional period, which the Informal Working Group requested based on the recommendation of the report. We will continue to take active part in the discussion on the residual structures to be established, paying due attention to the progress of the proceedings at the Tribunals.

The President (*spoke in French*): I thank the representative of Japan for his kind words addressed to me.

Mr. Liu Zhenmin (China) (*spoke in Chinese*): At the outset, the Chinese delegation wishes to congratulate Burkina Faso on its assumption of the presidency of the Security Council for the month of December. We also congratulate Austria on its successful presidency last month. I thank President Robinson, Prosecutor Brammertz, President Byron and Prosecutor Jallow for their briefings this morning.

We note that since the Security Council established the completion strategies for the two Tribunals, both have worked diligently to implement the strategies and made sustained progress, which we appreciate and commend. There is only one year left before the deadline established for the completion strategies, but trial work is still proceeding within the Tribunals. It is unlikely that all the work will be completed on schedule. In that regard, the anticipated date for the completion of all appeal cases by the International Tribunal for the Former Yugoslavia (ICTY) has been pushed back to 2014, while the International Criminal Tribunal for Rwanda (ICTR) will complete most of its trial work in 2010, although the date for the completion of appeal cases has been pushed back to 2013.

We note the many reasons for such delays and that certain factors therein were unanticipated by the Tribunals. However, the completion strategies established as an overall goal by the Security Council must always be followed by all actors. We hope that, based on their past efforts, the Tribunals will explore further effective working methods to accelerate the task of fulfilling the completion strategies.

We note that, according to the ICTY's report (S/2009/589), between 2005 and 2007 eight cases were referred to the relevant national judicial organs and that no cases now remain eligible for referral. The report of the ICTR (S/2009/587) fully recognizes that the effort to refer relevant cases to national jurisdictions is a critical element of the completion strategy and reaffirms the Tribunal's commitment to ongoing efforts in that regard. We reiterate that strenuous efforts to refer cases and transfer fugitives to willing and capable countries are key tasks of the completion strategies. We hope that the two Tribunals will continue to adopt measures to that end, and call on the countries concerned to cooperate fully with them.

We are pleased to note that, at the request of the Security Council, the reports of the two Tribunals refer to the implementation of the recommendations contained in paragraph 259 of the report of the Secretary-General on the administrative and budgetary aspects of the options for possible locations for the archives of the ICTY and the ICTR and the seat of the residual mechanism or mechanisms for the Tribunals (S/2009/258). That implementation will help the two Tribunals to transition successfully to the residual mechanism or mechanisms in the future. We hope that the Tribunals' efforts to that end will enjoy early and substantive success.

The Security Council's Informal Working Group on international tribunals is discussing the issue of a residual mechanism for the two Tribunals and will hold consultations on a relevant draft resolution. We thank the Informal Working Group for its efforts. We appreciate the contributions of the Austrian delegation in that respect and the comments and suggestions of the Tribunals to the Working Group in this process. We hope that the Working Group's efforts will help to

promote the implementation of the completion strategies.

The President (*spoke in French*): I thank the representative of China for his kinds words addressed to me.

Ms. DiCarlo (United States of America): Let me begin by congratulating you, Sir, on assuming the presidency of the Council in December and by assuring you of my delegation's full cooperation during this busy month. Let me also thank Ambassador Mayr-Harting and the delegation of Austria for their excellent stewardship of the Council last month.

I should like today to welcome the Tribunal Presidents and Prosecutors back to the Council and thank them for their assessments. The United States commends the representatives and staff of the International Criminal Tribunal for Rwanda (ICTR) and the International Tribunal for the Former Yugoslavia (ICTY) for their work to bring the perpetrators of some of the world's most heinous crimes to justice. We particularly appreciate the efforts of ICTR President Byron, ICTY President Robinson, Prosecutors Brammertz and Jallow, and Registrars Dieng and Hocking. We salute their continued dedication to the cause of justice as they prepare for the closure of the Tribunals. An efficient closure that continues to support the victims and ensures that they receive a measure of justice for these crimes will require difficult, dedicated work.

The United States believes it is important to create a residual mechanism to manage the necessary functions of the Tribunals after the completion of their pending trials and appeals. We thank the Secretary-General for his report on the administrative and budgetary aspects of such a mechanism (S/2009/258), which will help decision makers develop an effective and cost-efficient one. We urge both Tribunals to continue to strive to complete their work by the earliest possible date, and we thank the Security Council Working Group chaired by Austria for its efforts to address and resolve residual issues.

We must remember why the Tribunals were established — to identify and hold accountable those responsible for some of history's worst crimes. We must not lose sight of the historic importance of this task. We must work to establish residual mechanisms that do not allow the 13 outstanding ICTY and ICTR fugitives to escape justice. Individuals indicted by the Tribunals who remain at large must be apprehended and brought to justice without further delay. We call on all States to fulfil their legal obligations to cooperate with the Tribunals and to take the necessary steps to ensure that the remaining fugitives are apprehended.

In particular, I should like to underscore the need to reinforce efforts to bring ICTR fugitive Félicien Kabuga to face international justice. We are concerned that the Government of Kenya has not responded to the Tribunal's request for certain Government records relating to Kabuga's assets and has not provided details to support the claim that Kabuga has left Kenya. We urge Kenya to act immediately on the Tribunal's recommendations and to take effective steps to deny Kabuga access to his support networks.

The United States acknowledges Rwanda's desire to receive transferred cases from the ICTR. We commend the Prosecutor's support for that effort as well as the work by the Rwandan Government and others to build up capacity in the Rwandan legal system to make such transfers possible. We welcome the transfer last month of eight individuals convicted by the Special Court for Sierra Leone to Mpanga Prison in Rwanda, an achievement that highlights Rwanda's growing capacity and commitment to meeting international standards. The ICTR's ability to transfer cases to Rwanda and other States as appropriate is a critical step towards meeting the Tribunal's completion strategy.

The United States commends the efforts of States to cooperate with the ICTY, but vital duties remain unmet. The two remaining fugitives, Ratko Mladić and Goran Hadžić, must be arrested and transferred to the Tribunal to face justice. Cooperation with the ICTY remains a fundamental obligation for all States in the region. We commend the Government of Serbia for its improved cooperation and we urge it to continue to do everything in its power to locate, arrest and transfer Mladić to the Tribunal. The arrests of Mladić and Hadžić are important for the successful completion of ICTY's mandate, for Serbia's full Euro-Atlantic integration and for the cause of justice and accountability.

We welcome Croatia's efforts to response to the Trial Chamber's September 2008 order to deliver artillery documentation from Operation Storm or engage in a credible investigation into its fate. We believe that latest ongoing investigation and

establishment of a task force by the Government of Croatia are significant steps forward. At the same time, we encourage the Croatian authorities to explore additional measures, such as using outside expertise and more aggressive investigative techniques that might help recover additional documents.

Bosnia and Herzegovina has made great strides to cooperate with the Tribunal, and ICTY has done a commendable job in supporting the development of domestic courts. But last month, the High Representative for Bosnia and Herzegovina informed us that domestic war crimes prosecutions and reform of the justice sector have suffered due to the inability of leaders to reach political decisions that advance national goals. We note the critically important work that international judges are doing in that country and we support the extension of their mandate beyond December. International judges and prosecutors have worked tirelessly to bring justice to the victims of atrocities regardless of ethnicity.

I wish to thank again the Presidents, Prosecutors, Registrars and Tribunal staffs for their dedication. Their work remains critically important to the fight against impunity and for stability and reconciliation in the regions involved.

The President (*spoke in French*): I thank the representative of the United States for the kind words she has addressed to me.

Mr. Apakan (Turkey): At the outset, I should like to congratulate you, Mr. President, on your assumption of the presidency of the Council for the month of December. I am sure that, under your able guidance, the Council will enjoy a smooth and productive programme of work. I should also like to express our sincere appreciation to Ambassador Thomas Mayr-Harting and the entire Austrian Mission for their excellent leadership of the Council during the month of November.

I wish to thank the Presidents and Prosecutors of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and of International Criminal Tribunal for Rwanda (ICTR) for their comprehensive briefings. Turkey greatly values the important work carried out by the Tribunals in combating impunity and providing justice to the victims of violations of international humanitarian law committed on the territories of the former Yugoslavia and of Rwanda. We commend the judges, prosecutors and staff for their dedication and hard work.

Despite the continued efforts of both Tribunals, the projected dates for the completion of their work will not be met, as indicated in the reports of the Tribunals (S/2009/587 and S/2009/589). We acknowledge that the delay in the trial schedule mainly resulted from a number of reasons that are not immediately within the control of the Tribunals. We nevertheless urge the Tribunals to continue to implement the completion strategies and complete their work at the earliest date possible, while ensuring international judicial safeguards and standards.

Cooperation between Member States and the Tribunals is essential for the successful completion of the Tribunals' mandates. In that regard, we welcome the cooperation by Uganda and the Democratic Republic of the Congo in the recent arrest and transfer of two fugitives to the ICTR. We also welcome Prosecutor Brammertz's report of improved cooperation by Serbia, and we share the hope that that improved cooperation will result in the apprehension of the fugitives Ratko Mladić and Goran Hadžić in the near future.

The arrest of the remaining fugitives sought by ICTY and ICTR continues to constitute a top priority for the completion of the Tribunals' work. All those responsible for violations of international humanitarian law committed on the territories of the former Yugoslavia and Rwanda must be brought to justice, and we appeal to all States to cooperate with the Tribunals so as to ensure the arrests of the remaining fugitives.

Prosecutor Brammertz's report (S/2009/589, annex II) also states that Croatia and Bosnia and Herzegovina have adequately responded to requests for assistance by the Office of the Prosecutor of the ICTY. We welcome the continued efforts of both countries in order to fulfil their obligations to cooperate with the ICTY. In that context, the establishment of a task force by the Croatian authorities is a positive and important step forward.

The referral of cases to national jurisdictions is another important element of the fulfilment of the Tribunals' mandates. The international community should provide support, where necessary, in order to strengthen the capacity of the national institutions of the concerned countries. We welcome Rwanda's efforts

to meet the requirements for the referral of cases to its jurisdiction.

Finally, as highlighted by the Presidents of the Tribunals, retaining qualified staff is also of great importance for the timely completion of the mandates. Thus, both Tribunals should be provided with the necessary means so that the judicial capacity of the Tribunals can meet the current circumstances. Turkey is ready to support every step in that direction.

Since their inception, the ICTY and ICTR have made important contributions to international criminal justice. As we are now approaching their closure date, we also need to tackle legacy and residual issues. The Informal Working Group on the International Tribunals has been working intensively on those issues under the chairmanship of the Austrian delegation and with the valuable assistance of the Office of Legal Affairs.

The report of the Secretary-General on the administrative and budgetary aspects of the residual issues has greatly contributed to the discussions in the Working Group, and we are pleased to note that the Tribunals have already commenced the work on the recommendations contained in the report. We are looking forward to intensifying our discussions in the Working Group with a view to reaching an agreement on the residual issues in the near future.

The President (*spoke in French*): I thank the representative of Turkey for the kind words he addressed to me.

Mr. Heller (Mexico) (*spoke in Spanish*): First of all, I would like to express our best wishes and offer our cooperation to the delegation of Burkina Faso for the conduct of the Council's work during December. I would also like to thank the Burkina Faso delegation for the close cooperation we developed with them in the Security Council over the past year. Mexico would like to acknowledge Ambassador Mayr-Harting and the Austrian delegation for their excellent work as President of the Security Council in November.

My delegation would like to thank the Presidents and Prosecutors of the International Tribunals for Rwanda and the Former Yugoslavia for presenting their respective biannual progress reports (S/2009/587 and S/2009/589) on the completion strategies of their activities, including the specific measures they have adopted to conclude their work, as well as the progress made in fulfilling the recommendations of paragraph 259 of the Secretary-General's report (S/2009/258), which the Council endorsed.

We acknowledge the efforts by both Tribunals to accelerate the completion of their judicial activities in a responsible and efficient way, guaranteeing the main objective of imparting justice and respecting the due process rights of the accused. We are aware that judicial activity will always be subject to a series of unforeseen conditions and circumstances and that both the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) face them in the best way possible. However, the actions already undertaken by both Tribunals give us the confidence to urge them to implement additional measures to conclude their work and give weight to the establishment of a residual mechanism.

With regard to the report of the International Criminal Tribunal for Rwanda, we wish to emphasize some of the progress that has been made, in comparison to the biannual report of last June. A significant number of sentences have been pronounced and several trials are close to sentencing, that is, before the end of this year. Two fugitives have been arrested — one of them of a high rank — thanks to cooperation by neighbouring States, the Democratic Republic of the Congo and Uganda. Significant measure have been adopted with regard to criminal procedures to preserve the necessary evidence to begin the trials that we all hope will take place in the near future against those accused who are still at large.

Regarding the report of the International Criminal Tribunal for the Former Yugoslavia, the transfer to national jurisdictions of cases of mid- and low-level accused stands out. That contributes to strengthening the national capacities of countries in the region to handle serious violations of international humanitarian law. Additionally, data on the progressive reduction of judicial activity are relevant in that the residual mechanism can have a judicial function limited to accused of the highest rank.

We have taken note of the valuable judicial cooperation by the Government of Croatia, and we encourage it to continue in the same way with issues pending before the Tribunal. Unfortunately, we have also taken note — and this is an insult to the international community — of the need for all States, not just the States in the region, to end the impunity

that two of the main perpetrators of the most serious human rights violations in the Balkans have continued to enjoy.

Both Tribunals have emphasized the need to maintain their staff and to extend certain mandates of some judges in order to meet the dates that the Council has established for the completion of their tasks. We should not overlook the fact that the Tribunals have to face the ongoing challenge of achieving a balance between imparting justice, administrative efficiency, guaranteeing the fundamental rights of the alleged perpetrators, witnesses and victims, and completing their work as soon as possible. Nor can we underestimate the fact that that task is doubly difficult in the context of judicial proceedings. For those reasons, the Security Council should continue, in our opinion, to have a pragmatic and flexible approach with regard to the Tribunals' completion strategies. We believe the best option would be for them to conclude their work in the very near future, but not because of peremptory dates.

Progress in the implementation of the completion strategies, which the Tribunals have shared with us, can contribute to the establishment of the residual mechanism in a more manageable and efficient way. In the coming months we will be giving shape to the residual mechanism in the framework of the Informal Working Group on the International Criminal Tribunals, on which our colleague from Austria has given a very detailed summary. We have a very important foundation for that, thanks to the Secretary-General's report and to the first-hand, detailed information on each of the functions to be assumed by the mechanism that those in charge of the Tribunals have just presented to us, information based on experience.

Even in the midst of those minute considerations, the Security Council must continue to observe the principal goal, which is that of guaranteeing the carrying out of justice with regard to the most serious crimes and atrocities against humanity that were committed in the context of conflict in the former Yugoslavia and Rwanda. Mexico will continue working in the next few months to contribute to the successful implementation of the completion strategies of both Tribunals and the establishment of the residual mechanism.

The President (*spoke in French*): I thank the representative of Mexico for the kind words he addressed to me.

Mr. Urbina (Costa Rica) (*spoke in Spanish*): My delegation is pleased to see you, Sir, presiding over our work for the month of December. We are sure that your skills, experience and leadership and the support of your delegation will contribute to the success of our work. I would also like to thank the Austrian delegation and Ambassador Mayr-Harting for their excellent work in November, which enabled us to successfully complete the Council's work.

I wish to begin by thanking the Presidents and Prosecutors of the International Tribunals for Rwanda and the Former Yugoslavia for their briefings. Costa Rica acknowledges, and thanks them for, their efforts to pursue the completion strategies set in resolutions 1503 (2003) and 1534 (2004).

Based on the conviction that lasting peace is inseparable from justice, Costa Rica has supported all efforts of the international community to strengthen the international criminal justice system. We have thus contributed to the development and consolidation of a cluster of institutions, one that is new in international law, to prevent the most serious crimes, stop impunity and guarantee redress.

The Security Council Informal Working Group on International Tribunals has achieved significant progress in its debate on the essential functions which should remain active once the Tribunals complete their pending cases. Costa Rica stresses the importance of the agreements reached on the need for the Tribunals to transfer new cases to national tribunals where appropriate and on the need to continue to strengthen capacity in the affected countries. There is no doubt that an important part of the legacy of both Tribunals will be their achievements in transferring skills and building capacity in the judicial systems of countries under their jurisdiction.

Despite this progress, Costa Rica regrets that the necessary consensus has not been reached on the elements of a new resolution which should provide greater precision on the closure of both Tribunals and agreement on the functions of the residual mechanism or mechanisms.

Costa Rica appreciates and is grateful for the Secretariat's report on the administrative and budgetary

aspects of the options for possible locations for the archives of the Tribunals and the seat of the residual mechanism(s) for the Tribunals (S/2009/258). We acknowledge that the archives are the property of the United Nations, but we would like to stress their condition as historical memory and instruments of reconciliation and peace, which belong fundamentally to the countries under the jurisdiction of the Tribunals.

Before closing, I would like to draw attention to the priority nature of the arrest of fugitives for the completion of the work of the Tribunals. Without the prosecution of these fugitives, particularly Kabuga, Mladic and Hadzic, the implementation of the Tribunals' mandates would be incomplete. Costa Rica calls on all States to cooperate with the Tribunals and to comply with Council resolutions and provide any information that would indicate the whereabouts of the fugitives.

On taking stock of the work of the two international Tribunals, we would like to acknowledge the steps taken by Croatia to improve its cooperation with the ICTY, and we hope that they will be successful. Costa Rica acknowledges and thanks the judges, Prosecutors and staff for their contributions and supports them in their efforts to implement the completion strategies in the most efficient way possible. We also call for the consideration of measures to curb the turnover of technical staff of the Tribunals, in the hope that its staff will obtain the same contractual terms and conditions as other United Nations officials.

The President (*spoke in French*): I thank the representative of Costa Rica for the kind words he addressed to me.

Mr. Rugunda (Uganda): I wish to congratulate you, Sir, on your assumption of the presidency of the Security Council for this month. I assure you of our full support and cooperation. In the same breath, I would like to salute Ambassador Mayr-Harting for the very able manner in which he and his country presided over the Council last month.

We welcome The Honourable Justice Byron, President of the International Criminal Tribunal for Rwanda, and The Honourable Justice Robinson, President of the International Tribunal for the Former Yugoslavia, and thank them for the briefings. We also thank Prosecutor Brammertz and Prosecutor Jallow for their briefings. Uganda appreciates the tremendous work carried out so far by the Tribunals. We attach great importance to the delivery of justice and the fight against impunity for persons who bear the greatest responsibility for heinous crimes and violations of international humanitarian and human rights law.

In resolutions 1503 (2003) and 1534 (2004), the Security Council set a deadline and called upon the Tribunals to take all measures possible to complete all trial activities. It stressed the importance of fully implementing the completion strategies. It is now obvious that these targets cannot be met due to intervening circumstances outside the control of the Tribunals. The arrest of Karadzic, in the case of the Tribunal for the Former Yugoslavia, as well as, more recently, the arrest of Nizeyimana in Uganda, shows that dispensing justice cannot be adequately guided by deadlines. Since the Tribunals have no police forces of their own but depend upon the cooperation of States, we call upon States to cooperate with the Prosecutors and help in the arrest and transfer of the remaining fugitives.

Even when the Tribunals' mandates are over, there are residual issues that will remain until the last sentence is served. Certain functions of the Tribunals will not necessarily terminate upon the conclusion of the trials and appeals. The fugitives, if and when they are apprehended, the convicts serving sentences, and the witnesses and victims that may still be under protection will still need oversight by the mechanisms. There is no substitute for programmes such as those that provide protection for victims and witnesses. We note, for instance, the challenges of residual issues which are also of concern to other interim judicial tribunals. Perhaps the only sure way of avoiding interim measures is to consider embracing permanent institutions such as the International Criminal Court.

Uganda fully supports an expeditious improvement in the conditions of service for the ad litem judges.

We welcome the measures taken to preserve and manage the archives. My delegation is aware that the archives are the property of the United Nations, but we are also cognizant of the need to keep them in their respective regions, along with the residual mechanisms for ease of access by the primary stakeholders: the victims of these heinous crimes.

We welcome the formation of a genocide awareness-raising network being conducted in Rwanda

by the Tribunal and call upon those who are able to contribute to this effort to do so. The training of Rwandan jurists, including training in international criminal law, is welcome, as it ensures that there will be adequate preparation for the courts in Rwanda to handle the cases that are not handled by the Tribunal. The reported high demand for future training strengthens the case for keeping the archives and residual mechanisms in the region. Uganda therefore recommends the establishment of two mechanisms, one in the African region and the other in The Hague.

Witness intimidation leads to delay in the trial process and should be curbed by appropriate measures to ensure that the ultimate credibility of the process is not put in doubt. We therefore support the allocation of the necessary resources towards that end. The formation of three Appeals Chamber benches to deal expeditiously with the anticipated appeals is also welcome. The holding of two separate sittings per day by the International Tribunal for the Former Yugoslavia ensures maximum utilization of the limited number of courtrooms. We welcome the downsizing exercise because it is in tandem with the reduced workload.

We are concerned about the high turnover of highly qualified and essential staff as the Tribunals near the end of their mandates. That can only exacerbate an already difficult situation. We commend the creation of the roster system, which ensures that qualified replacements are within reach.

My delegation welcomes the outreach and capacity-building programmes and other legacy matters that form part of the Tribunals' completion strategy. That ensures that there will not be a vacuum upon termination of the mandate. To that extent, the Tribunals are exemplary models of international criminal justice.

Mr. Dabbashi (Libyan Arab Jamahiriya) (*spoke in Arabic*): First of all, I would like to congratulate you, Mr. President, and your delegation on the assumption of the presidency of the Security Council for December. We are certain that your African wisdom and skills will enable you to direct the work of the Council successfully. I would also like to thank Ambassador Mayr-Harting and his delegation for wisely conducting the Council's work last month.

I wish to welcome the Presidents and the Prosecutors of the two courts, the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, and thank them for all the information that they provided in their briefings.

We welcome the noticeable progress made in the completion strategy work for the two Tribunals and the strong determination of the judges, prosecutors and all the staff of the Tribunals to complete their mandates successfully and as soon as possible. However, we are aware of the difficulties that the Tribunals encounter while carrying out their work, in particular when the swift arrest and extradition of the accused become impossible. While it is true that we welcome the cooperation of the Governments of Serbia, Croatia, the Democratic Republic of the Congo and Uganda on the arrest and the extradition of some senior accused, we hope that all countries will continue to fully cooperate in arresting the remaining fugitives as soon as possible, given the importance of the arrests to provide equity for the victims, to uphold justice, to achieve reconciliation and to provide security and stability in their respective countries and regions.

We firmly believe that enhancing the capacity of the judicial authorities in the countries concerned, in particular Rwanda, is especially important if we want those national judicial institutions to take on the trials that the two Tribunals will not be able to take up because they will have completed their work. It is vital to transfer as many pending cases as possible to national jurisdictions, in full conformity with the rules and procedures for fair trials. Transferring some cases to national jurisdictions would undoubtedly boost the rule of law in those countries, in particular access to documentation, which is even more important than the judicial procedures themselves in order to know the history and national reconciliation efforts in those countries.

We must ensure completion of the Tribunals' work with scrupulous respect for the deadlines called for by the two completion strategies, which means that we must make a decision on the legacy of the Tribunals. We are pleased to see the efforts made by the informal Working Group on international tribunals, chaired by Austria, seeking to reach an agreement on all pending issues with regard to the legacy of the Tribunals.

Thus, we would expect the Council to address the conclusions of the Working Group in the near future, and for it to establish an international mechanism that

would guarantee the effective and professional treatment of the legacy of the two Tribunals after the completion of their work.

The President (*spoke in French*): I would now like to make a statement in my national capacity as the representative of Burkina Faso.

As is right, I would like to thank the two Presidents and the two Prosecutors of the International Criminal Tribunal for Rwanda (ICTR) and the International Tribunal for the Former Yugoslavia (ICTY) for their reports on their activities during these past six months and on the implementation of the completion strategy for each Tribunal, in accordance with resolutions 1503 (2003) and 1534 (2004).

I would also like to thank Ambassador Mayr-Harting of Austria for the information that he has provided us on the work of the informal Working Group on international tribunals.

We would like to congratulate the two Tribunals for their efforts to implement their completion strategies within an acceptable timeline, and we encourage them to maintain that pace.

Despite the efforts to make progress with pending cases, the situation of high-ranking fugitives, such as Ratko Mladić, Goran Hadžić or Félicien Kabuga, remains a source of concern. We urge the Offices of the two Prosecutors to continue to make the necessary efforts to arrest them. We call on all States, in particular those in the regions concerned, to cooperate with the Tribunals at the highest possible level to that end. We congratulate Uganda and the Democratic Republic of the Congo for their help in arresting two fugitives in neighbouring countries.

On the issue of the deadline for completing their work, we understand that factors beyond the Tribunals' control have caused delays in their daily work. We therefore note the necessity of the indicative deadline of 2013 for the finalization of judicial activities.

In the meantime, it is important that the initiatives to redeploy staff and reduce the size of the Tribunals continue. In the same vein, we are pleased to see that cases are successfully being transferred to national jurisdictions by the ICTY, and we urge the ICTR to continue to pay particular attention to the need to transfer the cases of second- and intermediate-rank accused to national jurisdictions, in particular that of Rwanda. That is clearly an essential element of the completion strategy of that Tribunal as approved by the Security Council.

Although we understand the reasons behind recourse to the dual employment of some judges who have decided to return to their national administrations, we encourage the Tribunals to limit such cases, which should be exceptional. We urge them to pursue their awareness-raising and capacity-building efforts and to further enhance their cooperation ties with national jurisdictions. Similarly, the protection of victims and witnesses should be an ongoing priority for the Tribunals, especially in light of the invaluable contribution of witnesses to the administration of justice.

With regard to the status of the ICTR ad litem judges, most of whom have worked on a permanent basis for five years or more, we believe that it would only be fair for the Security Council to consider the question of benefits for judges, to which they should be entitled in light of their conditions of service.

Burkina Faso has followed with interest the efforts of the Security Council Informal Working Group in addressing residual matters under the chairmanship of Austria, whom we congratulate for its leadership and for having prepared the draft resolution under discussion in the Working Group. We hope that the draft will enable us to reach a satisfactory solution to the significant concerns about the functions, character and structure of the residual mechanism, as well as the question of the archives of the Tribunals.

I now resume my functions as President of the Security Council.

I give the floor to the representative of Sweden.

Mr. Lidén (Sweden): I have the honour to speak on behalf of the European Union (EU). Turkey, Croatia, the former Yugoslav Republic of Macedonia, Iceland, Albania, Bosnia and Herzegovina, Montenegro, Ukraine, the Republic of Moldova, Armenia and Georgia align themselves with this statement.

At the outset I would like to thank the Presidents of both Tribunals, Judge Robinson of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and Judge Byron of the International Criminal Tribunal for Rwanda (ICTR), and the Prosecutors, Mr. Brammertz and Mr. Jallow, for their briefings on

the implementation of the completion strategies of the Tribunals.

Preserving the legacy and integrity of the Tribunals is of the utmost importance to the European Union. The Tribunals have had a pioneering role in the fight against impunity and made outstanding contributions to international criminal law and international humanitarian law. It is a fact that the Tribunals will not be able to complete their work within the dates envisaged in resolutions 1503 (2003) and 1534 (2004). A number of challenges face both Tribunals in their work towards completing their mandates.

The European Union regrets that, despite the continuing appeals of the international community, 13 accused remain at large. The arrest of the remaining fugitives is necessary for the completion of the Tribunals' work. Among those still at large are key indictees allegedly responsible for the most serious atrocities, such as Ratko Mladić, Goran Hadžić and Félicien Kabuga. There have been many commendable instances of cooperation. However, the European Union continues to urge all States to cooperate immediately and unconditionally with both Tribunals, in full compliance with their obligations under the relevant Security Council resolutions.

As outlined in the current completion strategy reports, retaining qualified staff and judges remains a difficult task. We acknowledge the importance of enabling the Tribunals to complete the proceedings as soon as possible without compromising due process. However, we also reiterate the need for the Tribunals to ensure that they continue to seek efficiencies wherever possible and that they move to downsize as soon as possible, in line with the level of trial and other remaining activities.

We note with appreciation the ICTR's high output in judgements and newly commenced trials in 2009. The European takes note of the continuing commitment to the completion of the mandates of the Tribunals. The EU also urges the Tribunals to continue to identify further measures to complete their work in an efficient and expedient manner.

I will now turn to the work of the ICTY more specifically. The EU would like to recall that full cooperation with the ICTY is an essential element of the enlargement strategy of the European Union. This includes assisting in strengthening national jurisdictions through capacity-building, as called for in resolutions 1503 (2003) and 1534 (2003). Our commitment to strengthened cooperation and capacity-building is demonstrated by the number of EU members that have concluded agreements with the Tribunal on the relocation of witnesses, the enforcement of sentences, the secondment of prison staff, and the financial and institutional support of the EU to the Tribunal's capacity-building and outreach activities.

We note with appreciation the efforts made by Rwanda to meet the demands regarding the right to a fair trial. The ongoing strengthening of the Rwandan legal system and its ability to adjudicate cases from the ICTR will, we hope, permit the ICTR to transfer such defendants to the Rwandan courts. These efforts have been fully supported by the European Union as an important step towards the fulfilment of the Tribunal's completion strategy.

The primary responsibility for the prevention, investigation and prosecution of genocide, war crimes and crimes against humanity lies with States. Thus, the European Union continues to support the capacity-building activities of both Tribunals, which also contribute to the enhancement of the rule of law and regional stability.

The European Union welcomes the work on residual issues of the Security Council Informal Working Group on international tribunals, including identifying functions that need to continue after the two Tribunals have completed their work. We value the open and transparent discussions under the Austrian chairmanship, including by convening an Arria formula meeting open to all Member States in October.

The European Union stands ready to continue to work with the Council on finding the most appropriate solutions to the residual and legacy issues. This includes addressing questions of a practical nature, as well as finding solutions to ensure adequate access to the archives. The archives should foster reconciliation and memory and contribute to the preservation of the profound achievements of both Tribunals to secure a long-term legacy. Existing capabilities should also be built on and synergies between Tribunals should be created as part of an overall strengthening of international criminal justice.

The President (*spoke in French*): I now give the floor to the representative of Bosnia and Herzegovina.

Mr. Barbalić (Bosnia and Herzegovina): At the outset, allow me to congratulate the Austrian delegation for its remarkable presidency of the Security Council in November and also to convey to you, Mr. President, our best wishes for your presidency.

In addition to this statement, Bosnia and Herzegovina has aligned itself with the joint statement of the European Union.

Bosnia and Herzegovina expresses its profound gratitude to the Presidents of both Tribunals, Judge Robinson of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and Judge Byron of the International Criminal Tribunal for Rwanda (ICTR), and the Prosecutors Mr. Brammertz and Mr. Jallow, for their tireless work and determination in seeking justice, and for their efforts in making their reports comprehensive and detailed. The work of both Tribunals has been crucial since they were established and remains such in combating impunity. We also note the importance of the Security Council Informal Working Group on international tribunals and commend the work of its Chair, Ambassador Mayr-Harding of Austria, as well as the efforts of the United Nations Office of the Legal Counsel.

We especially welcome the positive assessments, presented in the briefings of both the President and the Prosecutor of the ICTY, of the level of cooperation between Bosnia and Herzegovina and the ICTY, which confirms once again our strong determination and long-standing commitment to the Tribunal's values, goals and legacy. This high level of cooperation is also reflected in the number of accused being transferred to Bosnia and Herzegovina. Of the 13 accused who have been transferred to the national jurisdictions of countries of the former Yugoslavia, 10 have been transferred to Bosnia and Herzegovina alone. The proceedings against nine of them have been concluded, and the manner in which these cases were conducted by the War Crimes Chamber of the State Court of Bosnia and Herzegovina was in full compliance with the highest standards of international law. In that context, we also strongly support the efforts that the ICTY has made through its outreach programme and the continuous support and assistance provided to national jurisdictions in the region.

The authorities of Bosnia and Herzegovina have responded to the Tribunal's requests for assistance on documents and access to Government archives. The authorities are also continuing to assist in facilitating the appearance of witnesses before the Tribunal. In that context, we want to underline the importance of the role of the international community, which has been essential in assisting with witness protection programmes and, when necessary, in providing support for witness relocation.

My country recognizes the efforts of Prosecutor Brammertz to secure justice for victims and their families.

Bosnia and Herzegovina is fully aware of the conditions set out in resolutions 1503 (2003) and 1534 (2004) for the accomplishment of the completion strategy, but notes with concern that, with two fugitives remaining at large, the full completion of the Tribunal's work cannot be expected.

There is no doubt that the Tribunals have served as an inspiration to the international community by refusing to let perpetrators of the most heinous and grave crimes to escape justice. Therefore, the international community itself must stand firm when it comes to its decision that Ratko Mladić and Goran Hadžić must be tried before the ICTY. Under no circumstances can they count on impunity due to the fact that the mandate of the Tribunal is coming to an end. It is justice, and not deadlines, that the Tribunal needs to deliver.

The implementation of the completion strategy remains of great concern to us. We welcome the ongoing discussion on an adequate residual mechanism and understand the importance and complexity of the issue. The mechanism requires consideration and needs to be set up in such a manner as to deal adequately with the issue of prosecuting those subject to outstanding warrants and arrests and ensure that impunity is not an option.

The President (*spoke in French*): I thank the representative of Bosnia and Herzegovina for his kind words addressed to me.

I now give the floor to the representative of Serbia.

Mr. Starčević (Serbia): First of all, let me express the gratitude of Serbia to Judge Patrick Robinson and Mr. Serge Brammertz, respectively the President and Prosecutor of the International Criminal Tribunal for the Former Yugoslavia, (ICTY), for all the

effort and professionalism they have invested in presenting their reports (see S/2009/589, annexes I and II).

My country is highly appreciative of the fact that, more than ever before, their reports are in essence in full accord with Serbia's own assessment of the level of cooperation that has been reached. Judge Robinson and Mr. Brammertz have recognized the entirely of the efforts that Serbia is making to comply with its legal and moral obligations. The efforts and commitments of the services engaged in tracking and apprehending the remaining fugitives have been recognized in a manner that confirms my country's political will and the capacity of its institutions to complete successfully the remaining tasks.

There are no impediments to Serbia's cooperation with the ICTY at this time. Requests for assistance with regard to the provision of documents, witness protection and access to State archives are being handled expeditiously. Most important, the efforts to locate and apprehend Ratko Mladić and Goran Hadžić are continuing unabated. The search for those individuals is being conducted on an everyday basis. The Government institutions of the Republic of Serbia are constantly taking all possible measures in order to bring the two remaining fugitives to justice.

That will go a long way towards alleviating the legacies of the past, some of which have hamstrung the recovery of Serbian society and other societies in the region for a long time. Also, the resolution of this one last remaining problem will confirm Serbia's willingness to face the truth about the events of the last decade of the twentieth century and the crimes perpetrated during the armed conflicts in the former Yugoslavia. It will also demonstrate its maturity and readiness to punish those responsible for the crimes that were committed, regardless of their nationality or the nationality of the victims.

Serbia continues to support the ICTY completion strategy in its entirety and has maintained its communication with responsible authorities on that issue in recent months. Serbia's position on the potential residual mechanism and the future residual functions was submitted to the Security Council in October 2008 and March 2009. I would like to reiterate Serbia's great and lasting interest in those issues, as well as to inform the Security Council that we remain at its disposal for possible future discussions on the matter in order to contribute to the resolution of those important questions.

In conclusion, allow me to reiterate once again Serbia's commitment to full cooperation with the ICTY. The reports presented to the Council today affirm that commitment and attest to the success of the joint efforts to bring that cooperation to a successful end.

The President (*spoke in French*): I now give the floor to the representative of Kenya.

Mr. Muchemi (Kenya): I wish to express my appreciation to you, Mr. President, and the other members of the Council for allowing me to participate in the proceedings of the Council today and to make my short statement.

Kenya appreciates the work of both the Presidents and the Prosecutors of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), as well as the manner in which they have conducted the affairs of their respective Tribunals. We strongly support the international criminal justice system. We recognize that the ad hoc criminal Tribunals established by the Council and the International Criminal Court must provide for, and protect, the proper administration of justice by prosecuting those who promote impunity. To that end, the cooperation of Member States is vital if the courts are to succeed in carrying out their mandates. Kenya is fully aware of its international obligations and continues to stand ready to offer its maximum cooperation in that connection.

As we have stated on previous occasions, Kenya supports the case put forward by the President of the ICTR on behalf of ad litem judges. We urge that there be an urgent resolution of that matter.

My delegation now wishes to comment on the work of the Office of the Prosecutor of the ICTR, and in particular on the issue of referrals. In paragraph 54 of the report on the activities of the ICTR (see S/2009/587, enclosure), it is implied that Kenya continues to provide safe haven for Félicien Kabuga. We note with disappointment that, despite Kenya's demonstrated support and cooperation with the Court since its inception, both the President and the Prosecutor, in their addresses this morning before the Council, have continued to insinuate that Kenya is

either hiding fugitive Kabuga or is otherwise refusing to fully discharge its obligation vis-à-vis his arrest. My delegation strongly refutes that allegation and reiterates that that fugitive is not in Kenya.

The Kenyan Government's efforts in cooperating with the ICTR are not in doubt. My country has worked closely with the Tribunal. In that regard, we have arrested and surrendered to the ICTR the largest number of indictees. Kenya has also played a major role in the relocation, protection and facilitation of movement of witnesses for the Tribunal.

Several steps have been taken in a bid to trace Mr. Kabuga, including the establishment of a joint Kenya-ICTR task force, obtaining a freeze order on property registered in the fugitive's name and offering cash rewards for anyone giving information that would lead to his arrest. The search for Mr. Kabuga should therefore be widened to other areas, because we might be over-concentrating on Kenya whereas the fugitive could be comfortably living elsewhere.

On 30 September 2009, as part of its continuing and unreserved commitment to the work of ICTR, Kenya concluded an extradition treaty with the Republic of Rwanda that provides, inter alia, for the extradition of Rwandans suspected of having committed genocide. This underscores Kenya's commitment to and seriousness in the apprehension of all perpetrators of the various crimes covered by the treaty and their extradition to Rwanda to face justice.

My Government calls upon any person, institution or other actors with information relating to the whereabouts of the fugitive, whether in Kenya or in any other country, to provide such information forthwith to the ICTR, INTERPOL or any other investigative agency in Kenya and elsewhere to facilitate the expeditious apprehension of this indictee so that he can face justice.

I wish to conclude my remarks by re-emphasizing that, in the Kabuga case, the Government of Kenya has fully discharged its international obligations and cooperated with the ICTR officials, as called for by the Security Council. We reiterate our commitment to the high ideals of international criminal justice and the eradication of impunity, and we will continue to implement the recommendations of the Joint Kenya-ICTR Task Force and the resolutions of the Security Council.

The President (*spoke in French*): I now call on the representative of Rwanda.

Mr. Gasana (Rwanda): I thank you, Mr. President, for the opportunity to participate in this debate, and allow me to congratulate you on assuming the presidency of the Council for the month of December. We also congratulate Austria on the successful conclusion of its presidency.

My delegation wishes to thank the President and Prosecutor of the International Criminal Tribunal for Rwanda (ICTR) for their briefings. We particularly welcome their acknowledgement of the cooperation extended to the Tribunal by my Government.

In the period since the Tribunal's most recent briefing to the Council, my Government has consistently extended the cooperation and support necessary to enable the ICTR to effectively execute its mandate. We have continued to facilitate unfettered access to witnesses for both the defence and the prosecution and assisted the movement of witnesses to and from Arusha. I am pleased to report to the Council that, in my Government's efforts to ensure the peace and stability of our citizens, we have continued to ensure the security of witnesses and, with the support of the Office of the Prosecutor, established the Rwanda witness protection service. My Government has continued to support investigations initiated by both the prosecution and the defence without prejudice to either.

My Government remains committed to continuing its support to the ICTR completion strategy, as set out in resolution 1503 (2003). Despite the decisions of the Trial and Appeals Chambers of the ICTR to reject the Prosecutor's decision to transfer cases to Rwanda, we remain prepared to receive any future cases transferred to our competent jurisdiction by the ICTR and to address all of the issues raised in objection by the Chambers in respect to their decisions. We welcome the Prosecutor's recognition of the reforms undertaken by my Government in the justice sector and his intention to renew his requests for referrals to Rwanda.

The recent transfer by the Special Court for Sierra Leone of five convicts to serve their sentences in Rwanda is testament to the fact that this Court, after due diligence, was satisfied that the efforts my Government had undertaken and continues to undertake were sufficient to merit transfer.

We continue to maintain that the transfer to Rwanda is based primarily on the fact that the crimes falling under the Court's mandate were committed in Rwanda, mostly by Rwandans and against fellow Rwandans. The evidence and witnesses used by this Court are also from Rwanda. The end results of the justice administered by the Tribunal are supposed to be more visible in Rwanda than elsewhere, and we thank the President of the ICTR for his recognition of this in his statement this morning. We remain confident that this situation will be remedied.

The recent decisions taken by the Trial and Appeals Chambers continue to hamper my Government's ability to pursue and bring to justice those suspected of genocide all over the world. These decisions have in tone and content undermined the efforts my Government has pursued to reject a culture of impunity and setback the progress registered in repairing our shattered national fabric, not only in the justice sector but in all aspects of national reconciliation and reconstruction. The recent acquittals of Protais Zigiranyirazo and Hormisdas Nsengimana and the basis for those acquittals are, in the view of my Government, most regrettable.

My Government welcomes the arrests of Grégoire Ndahimana and Idelphonse Nizeyimana and commends the Governments of the Democratic Republic of the Congo and Uganda for their efforts in this regard. We equally welcome the efforts of the Governments of Canada, Belgium, Finland and Sweden to apprehend and bring to justice persons within their jurisdiction accused of genocide. We regret, however, that some countries have failed to extend the necessary cooperation to either my Government or the Court, and we would urge them to do so.

My Government has repeatedly stated its view that the archives of the ICTR should be transferred to Rwanda upon completion of its mandate. This conviction is premised on the fact that these records constitute an integral part of our history, are vital to the preservation of the memory of the genocide and will play a critical role in educating future generations to ensure the prevention of genocide. We recognize the ongoing process to determine the final destination of the ICTR archives and will remain engaged in the ongoing deliberations of the Security Council Informal Working Group on international tribunals.

At this crucial juncture, my Government shares the Security Council's desire to reach a reasonable and effective conclusion to the ad hoc mandate of the Tribunal. We therefore urge the Council to do all within its power to ensure that the ICTR completion strategy is reached without creating an impunity gap and undermining the efforts of my Government. In conclusion, allow me to reiterate my Government's continued commitment to supporting the work of the ICTR.

The President (*spoke in French*): I thank the Permanent Representative of Rwanda for his kind words addressed to me.

There are no further speakers inscribed on my list. The Security Council has thus concluded the present stage of its consideration of the item on its agenda.

Before adjourning the meeting, I would like to thank, on behalf of Council members, President Robinson, President Byron, Prosecutor Brammertz and Prosecutor Jallow for their presentations to the Council.

The meeting rose at 1.30 p.m.